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EXAMINATION OF THE INTERSTATE COMMERCE COMMISSION'S MOTOR CARRIER SAFETY REVIEWS

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HEARING

BEFORE A

SUBCOMMITTEE OF THE

COMMITTEE ON GOVERNMENT OPERATIONS HOUSE OF REPRESENTATIVES

NINETY-NINTH CONGRESS

FIRST SESSION

SEPTEMBER 12, 1985

Printed for the use of the Committee on Government Operations

ORIGINAL

U.S. GOVERNMENT PRINTING OFFICE
54-522 O WASHINGTON : 1986

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CONTENTS

	Page
Hearing held on September 12, 1985	1
Statement of:	
Collins, Hon. Cardiss, a Representative in Congress from the State of Illinois, and chairwoman, Government Activities and Transportation Subcommittee: Opening statement	1
Pierson, Kenneth L., Director, Bureau of Motor Carrier Safety, Federal Highway Administration	2
Taylor, Reese H., Jr., Chairman, Interstate Commerce Commission, accompanied by Andrew J. Strenio, Jr., Commissioner; Bernard Gaillard, Director, Office of Compliance and Consumer Assistance; and Howard Sporn, Director, Motor Section, Office of Proceedings	19
Letters, statements, etc., submitted for the record by:	
Pierson, Kenneth L., Director, Bureau of Motor Carrier Safety, Federal Highway Administration: Prepared statement	5–10
Strenio, Andrew J., Jr., Commissioner, Interstate Commerce Commission: Prepared statement	33–36
Taylor, Reese H., Jr., Chairman, Interstate Commerce Commission:	
Applications involving carriers with unsatisfactory safety ratings	40
Information concerning DOT safety audit and applicant rating	40
Prepared statement	23–31

APPENDIXES

Appendix 1	49
Appendix 2	63
Appendix 3	67
Appendix 4	82

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EXAMINATION OF THE INTERSTATE COMMERCE COMMISSION'S MOTOR CARRIER SAFETY REVIEWS

THURSDAY, SEPTEMBER 12, 1985

HOUSE OF REPRESENTATIVES,
GOVERNMENT ACTIVITIES AND
TRANSPORTATION SUBCOMMITTEE
OF THE COMMITTEE ON GOVERNMENT OPERATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:05 a.m., in room 2247, Rayburn House Office Building, Hon. Cardiss Collins (chairwoman of the subcommittee) presiding.

Present: Representatives Cardiss Collins, Major R Owens, Gerald D. Kleczka, Matthew G. Martinez, and Alfred A. (Al) McCandless.

Also present: Michael Skrak, staff director; Cecelia Morton, clerk; and Brian Lockwood, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF CHAIRWOMAN COLLINS

Mrs. COLLINS. Good morning. This hearing of the Government Operations Committee's Subcommittee on Government Activities and Transportation will come to order at this time. Our hearing today will take an indepth look at the steps taken by the ICC and the Department of Transportation to stop unsafe trucking companies from operating. Under existing statute already in effect, the Commission can withhold an operating license from any carrier known to be a hazard to public safety.

While this hearing is not concerned with deregulation per se, deregulation has had a major impact on the trucking industry, of course. Safe operating procedures are really the only major barrier, beside insurance coverage, to entrance into the industry itself. In fact, one could say that the ICC's major current function is to prevent shoddy operators from competing for business.

DOT, on the other hand, is responsible for rating companies for their safety practices. We want to ascertain the Department's policy toward intervening in ICC procedures against carriers. We are interested in DOT's standards for rating carriers and for maintaining those standards.

We appreciate the cooperation of both agencies during our research. We especially would like to welcome the Commission to the subcommittee because this is their first appearance before us.

And while we are giving thanks, I want to say that I happen to have been reading a number of articles that Mike sent me. They

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were a fine series of newspaper articles by Mr. Tom Moore, who did a great deal of work on this subject and I think that I will make mention of that fact.

Mr. McCandless, do you have an opening statement?

Mr. MCCANDLESS. Thank you, Madam Chairwoman, I have no statement at this time.

Mrs. COLLINS. Thank you very much.

Our first witness today will be Mr. Kenneth Pierson who is Director of the Bureau of Motor Carrier Safety of the Federal Highway Administration. Mr. Pierson, won't you come forward, please, and you may begin your testimony.

STATEMENT OF KENNETH L. PIERSON, DIRECTOR, BUREAU OF MOTOR CARRIER SAFETY, FEDERAL HIGHWAY ADMINISTRATION

Mr. PIERSON. Thank you and good morning, Madam Chairwoman, and members of the subcommittee. The Department has been asked to appear today to discuss the implementation of section 215 of the Motor Carrier Safety Act of 1984, which directs the Secretary, in cooperation and coordination with the Interstate Commerce Commission, to establish a new safety fitness rating procedure for owners and operators of commercial vehicle operators.

A system has been in existence since 1967. That system is believed by many to have some shortcomings. I'm sure that it was the intention of the requirement in the new act to correct them. Indeed, we are in the process of developing regulations to implement that requirement.

Under existing law, regulations, and agreements between ourselves and the ICC, the Department must promptly inspect our records and report to the Commission the safety fitness rating of carriers who seek operating authority before the ICC. This system in the past involved a tremendous amount of paperwork, at one point reaching some 18,000 pieces of correspondence and covering both permanent authority applications, temporary authority applications, and emergency temporary authority applications.

This hard copy system was converted to automatic data processing in 1980 and had the result of relieving the burden not only on the DOT but also on the Interstate Commerce Commission. With the enactment of the Motor Carrier Act of 1980, there was again a crush of applications before the Commission and before our agency that had to be examined for purposes of safety fitness rating.

Some 17,000 applications were received in the first year following deregulation. We found ourselves in a perplexing position where we had no information on these new entrants; many of them sole proprietors and never before operating as a carrier, and indeed, we had no authority to compel them to furnish us information since they were not carriers within the definition of the law or our regulations.

This resulted in our having to create a category of rating called insufficient information, which we furnished to the Interstate Commerce Commission in literally thousands of cases. Given the 4,000 or more authorities issued each year by the Interstate Commerce Commission, our ability to specifically audit each new entrant was simply inadequate to meet that challenge.

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Motor carriers are selected for audit among the 216,000 carriers of record, in accordance with a neutral selection criteria which we establish each year, and new entrants are audited if they meet one or more of those criteria.

As a result of the requirement in the Motor Carrier Safety Act of 1984, which required us, in consultation with the ICC, to develop a new rating system, we held a series of meetings with that agency. We obtained from them an agreement or an understanding that they would be willing, as a part of the licensing procedure, to require new applicants to obtain from DOT a provisional safety rating and for carriers of record to report their rating at the time of application.

Procedural rules will be established and the format and the timeframe for handling such requests for action by DOT and by ICC are in process. Procedural rules will be issued under the provisions of the Administrative Procedure Act with opportunity for public comment by the public, by the carriers and other interested parties. A draft notice of proposed rulemaking has been developed and coordinated with ICC and is undergoing internal DOT review and will be sent to the Office of Management and Budget for review as required by DOT rules and Presidential Executive orders governing rulemaking.

Madam Chairwoman, your subcommittee has expressed interest in DOT's policies and in DOT's experience in safety intervention before the ICC with respect to applicants for operating authority. Unless such action is requested by the ICC, it has been DOT's policy to exercise the sanction of seeking to have a carrier's authority suspended or revoked, as a measure of last resort.

The Congress has made available to DOT a wide range of sanctions, from declaring commercial vehicles out of service, to ordering drivers off their vehicles; from allowing us to issue civil claim letters, to file criminal charges, and seek injunctive relief; and then finally, to go before the Interstate Commerce Commission to seek suspension or revocation of those authorities.

It is, and has been, our policy to intervene in applications or to petition against carriers already in business, only when we can show a pattern of noncompliance which could not be remedied by other less drastic measures or sanctions, than attempting to place the carrier out of business.

It is in this regard that we sometimes find ourselves in the posture of rating a carrier unsatisfactory but choosing not to pursue in intervention before the Commission. In most cases, this is where we have worked with the carrier. We have them either under a civil claim or have them under an order, and we are giving them an opportunity to bring their operation back into compliance. If we then went to the Commission and asked for the suspension or revocation of their authority, it raises some issues about fairness and also about double sanctions for particular offenses.

We know this committee has also been concerned about the fact that we have at times changed carriers' ratings without onsite visits. We admit this has been the practice in the past, but it is not the practice now, and has not been since August 1983. We will not, under current procedures, change a carrier's rating unless a field investigator goes to the carrier's place of business and verifies the

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changes, which the carriers affirm have taken place, prior to changing their rating.

We also know you are interested in the question of how DOT plans to ensure that carriers maintain their safety rating over time. This we believe can be done through our selection criteria for audits and also through the activities of the Motor Carrier Safety Assistance Program.

The Motor Carrier Safety Assistance Program, which is authorized by the Surface Transportation Assistance Act of 1982, provides funds from the highway trust fund to enhance State motor carrier inspection programs.

With respect to the selection criteria, it is designed to identify carriers in need of audit attention because of evidence of noncompliance that comes to our attention as a result of our roadside inspection activity, by accident experience that comes to our attention, by carrier filing of accidents and by other indicators such as failing to file reports over long periods of time. And it also includes reports of cooperating State agencies who furnish us copies of arrest citations.

The Motor Carrier Safety Assistance Program will come to bear on this because it will be factored into our selection process. Under the Motor Carrier Safety Assistance Program, we will be funding the acquisition of data information systems which will allow us to have the results of State inspection activity. Therefore, we expect to receive tens of thousands of State inspection reports which will make a large data base from which we may establish those motor carriers in need of our attention, and it may even be possible to establish safety ratings based solely on these massive numbers of reports that we anticipate receiving from the States.

In summary, Madam Chairwoman, we have had a safety rating program in effect for the last 18 years. We recognize that certain improvements need to be made and we are working on the plans and procedures for those improvements. And this concludes my summary statement.

[The prepared statement of Mr. Pierson follows:]

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STATEMENT OF KENNETH L. PIERSON
DIRECTOR, BUREAU OF MOTOR CARRIER SAFETY
FEDERAL HIGHWAY ADMINISTRATION
U.S. DEPARTMENT OF TRANSPORTATION
BEFORE THE SUBCOMMITTEE ON GOVERNMENT ACTIVITIES AND TRANSPORTATION, COMMITTEE ON GOVERNMENT OPERATIONS

SEPTEMBER 12, 1985

Good morning Madam Chairwoman, and members of the Subcommittee. We have been asked to appear today to discuss the implementation of Section 215 of the Motor Carrier Safety Act of 1984. Section 215 directs the Secretary of Transportation, in consultation with the Interstate Commerce Commission (ICC), to establish a new safety fitness procedure for owners and operators of commercial vehicles operating in interstate or foreign commerce.

The safety fitness rating procedures required by the Act are to include initial and continuing requirements to be met by carriers to prove their safety fitness; a means to determine whether such persons meet the safety fitness requirements; and specific deadlines for action by the Department of Transportation (DOT) and the ICC in making safety fitness determinations.

The Act established a 1-year time frame for the accomplishment of this task, and the submission of a copy of the procedure to Congress. We have been diligently pursuing this objective.

Background

In accordance with section 307(a) of title 49, United States Code, the Department of Transportation must promptly inspect its records regarding the safety compliance of any applicant seeking

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operating authority from the ICC and must report its findings to that agency. Pursuant to the original Memorandum of Agreement between DOT and ICC, a system of notification and response was established on April 3, 1967. This system involved tremendous paperwork exchanges, reaching some 18,000 pieces of correspondence by 1980 covering emergency temporary authority, temporary authority, and permanent authority applications.

In 1980, the hard copy system was converted to an automated data processing system with ICC access to our computerized safety rating data bank. Under this system, hard copy records were furnished only on request for some categories of applications, reducing the burden on both agencies.

With the enactment of the Motor Carrier Act of 1980, the number of applications before the ICC requiring safety ratings dramatically increased. Some 17,000 applications were received during the first full year after enactment of the deregulation act. We had no information on new entrants, and no authority to require information from applicants since they were not carriers and not subject to our regulatory authority until granted ICC authority. This resulted in our issuing "insufficient information" safety ratings on thousands of new entrants.

Given the 4,000 or more authorities issued each year by the ICC, our resources to specifically audit each new entrant were inadequate to meet the challenge. Approximately 7,000 audits of motor carriers and approximately 2,500 audits of hazardous materials shippers are conducted each year by DOT. Approximately 45,000 motor carriers and shippers of hazardous materials are

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known to the DOT and subject to our hazardous materials regulatory jurisdiction. Motor carriers are selected for audit from among the 216,000 carriers of record in accordance with neutral selection criteria established each year in our annual safety management audit program plan. New entrants are audited to the extent that they meet one or more of these criteria and then are selected for audit. An audit of each new entrant prior to receiving ICC authority would have required a change in the statute, and would have prevented addressing the other 182,000 non-ICC carriers of record.

The Plan

The ICC, as a part of the licensing procedure, will require new applicants to obtain a provisional safety rating from DOT, and carriers already of record will report their safety rating. This mechanism would result in requests from new entrants for provisional safety ratings, which would be made by a multipage submission in the form and manner prescribed by DOT. The process would require new entrants to supply information which will enable us to assess safety fitness and make a provisional rating. Procedural rules, promulgated by each agency, would establish the time frame for handling such requests and for action by DOT and ICC.

The procedural rules will be issued under the provisions of the Administrative Procedures Act, with opportunity for public comment. A draft Notice of Proposed Rulemaking has been developed and coordinated with the ICC. It is currently undergoing internal review by DOT and will then be sent to the Office of Management

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and Budget as required by DOT rules and Executive Orders governing rulemaking.

Related Issues

Your Subcommittee has expressed interest in DOT's policies and experiences in intervening with carriers applying for ICC authority and in complaints which seek the revocation or suspension of a carrier's existing operating authority. Unless such action is requested by the ICC, it is DOT's policy to seek to suspend or revoke a carrier's ICC authority only in the most severe cases.

Congress has provided DOT with a number of sanctions ranging from declaring vehicles and drivers out-of-service to civil and criminal prosecution. The level of the civil sanction is based upon consideration of several factors. Unless requested by the Commission in accordance with 49 U.S.C. 307, we seek to intervene in applications or petitions concerning carriers already in business only when we can show a pattern of noncompliance which could not be remedied by other less severe measures.

Consequently, we sometimes find ourselves in the posture of rating a carrier unsatisfactory, but choosing not to pursue an intervention or petition at the ICC. In cases where we have pursued civil or criminal remedies against a carrier for serious patterns of noncompliance, and the carrier pays the penalty, it is not automatically restored to a satisfactory safety rating. The change in rating comes about only when a carrier has taken effective steps to overcome its previous noncompliance and after this fact has been confirmed by an on-site review by our staff.

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We will upgrade the carrier's rating when we have written confirmation of the current safety posture of the carrier from our field staff. While this has not always been the practice of the agency, it is now and has been since August 1983.

The issue of carriers granted a safety rating without an audit came about when the automated data system was established in 1980. In order to get the system on line, it was decided to give a "satisfactory" safety rating to any ICC carrier of record on which we had no negative information. Each carrier's hardcopy file was reviewed and a determination made on a carrier-by-carrier basis. This was before we had created the "insufficient information" category of rating terminology. Since that time, many of these carriers have been audited, and their rating reflects the results of those audits.

DOT plans to ensure that carriers maintain their safety rating over time through carrier audits and activities of States under the Motor Carrier Safety Assistance Program (MCSAP). MCSAP is the Federal grant program authorized by the Surface Transportation Assistance Act of 1982, under which funds from the Highway Trust Fund are provided to States to enhance State motor carrier safety inspection programs.

Carriers in need of audit attention are identified based on evidence of noncompliance from roadside checks, accident experience, and indicators such as failure to report accidents over long periods of time. We also select carriers by generic class, such as hazardous waste haulers or bulk hazardous materials

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transporters, with or without evidence of noncompliance. We continue to focus on target groups to maximize our effectiveness.

MCSAP will come to be a significant factor in selecting carriers to audit in the future. As States implement the "SAFETYNET" data information system under MCSAP, we will be able to factor State inspection reports into the selection criteria. Therefore, the tens of thousands of State inspections will provide a larger data base on carrier noncompliance than we presently are using. It may then be possible to base safety ratings solely on roadside inspection reports provided there are sufficient numbers of reports to establish patterns of compliance or noncompliance.

Summary

We have had a safety rating program in effect for the last 18 years and improvements have been made over time. We recognize that more needs to be done. Our plans and procedures will result in even more improvements.

This concludes my prepared statement. I would be pleased to respond to your questions or provide additional material for the record to clarify or amplify the steps that we are taking to further improve DOT's motor carrier program.

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Mrs. COLLINS. Thank you very much, Mr. Pierson. I just have a couple of quick questions.

Can you tell us how many times the DOT has intervened when it came down with ICC to suspend licenses?

Mr. PIERSON. I believe probably not more than two times a year over the past 15 years.

Mrs. COLLINS. Is there a reason for that? It would seem that there would be sufficient cause to have at least a few more than that each year.

Mr. PIERSON. One of the reasons that we have not pursued intervention, as I mentioned in my statement, is because it really is a sanction of last resort. But more importantly, it has been a very resource intensive activity for us. At one point in time the Commission required us to have not only the exhibits and the witnesses from headquarters, but also required us to have our field inspectors who prepared reports available for cross examination, and it was very costly for us given the fact of the travel and expense and lost work time by those employees.

So we were not enamored with that process because of the formal procedures which the Commission used.

Mrs. COLLINS. Well, it would seem to me that if I were a carrier and had knowledge of this—and I'm sure the industry is well aware of it—that I'd feel that I could get away with just about anything and wouldn't have to worry about losing my license. And it seems to me that's the kind of message that's being sent. Is that not the case?

Mr. PIERSON. Well, it certainly is not the intent.

Mrs. COLLINS. I know it's not the intent.

Mr. PIERSON. I think if one were to interview those whom we have prosecuted criminally and civilly, they would probably not agree with that statement.

Mrs. COLLINS. Well, there are few in our universe of what, thousands at least, wouldn't you say?

Mr. PIERSON. Yes, ma'am.

Mrs. COLLINS. Sometimes self-policing can be done, just as the IRS does it because they do enough auditing and call enough people in to scare the daylights out of everybody because word runs through the neighborhood and what have you and it shows up in the newspapers and—television doesn't get a hold of it but everybody else does, and it's a self-policing action. And it would seem to me that if there was a more stringent enforcement of good safety rules and regulations then carriers would begin to self-police themselves—a play on words, not really, but would at least begin to be more careful and concerned that perhaps you might suspend their license if they get too far out of line. That's my whole point.

Mr. McCandless.

Mr. MCCANDLESS. Thank you, Madam Chairwoman. Mr. Pierson, I understand and respect the workload that you have, and the General Accounting Office states that very early in its report about the 200,000 motor carriers, 4 million interstate vehicles with 94 full-time employees. So I am not one who's expecting you to do miracles.

However, I thought the General Accounting Office, in this report to the Secretary of Transportation, had some pointed areas in it

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that I would like to discuss with you here. Let's start off by discussing first the actions taken by your enforcers.

GAO found wide differences in the actions of the individual investigators, and I am quoting now:

> For example, three investigators always initiated an enforcement case against carriers with unsatisfactory ratings. And one investigator always scheduled a re-audit for carriers with such rating. Another investigator initiated an enforcement case 40 percent of the time and took no action 60 percent of the time.

It would appear there that there is a lack of some type of criteria set forth by management by which these people may or may not then proceed as investigators. Is that a fair statement?

Mr. PIERSON. It is a fair statement. We are not questioning the results of the GAO audit. Indeed, those things did happen. However, there has been a Motor Carrier Safety Operations Manual and a standardized training text for all field employees governing their activities. The problem is one of organizational reporting and supervision practices.

That question has been addressed when in March of this year the Federal Highway Administrator ordered the field staff involved in the Motor Carrier Safety Program to be directly responsible to the Bureau in Washington. Prior to that, they were placed under the engineers in the Federal Highway Program and had a very long and lengthy chain of command, and indeed, the Bureau was restricted to technical direction of the program rather than actual supervision.

So we recognized that shortcoming and indeed are addressing it, sir.

Mr. MCCANDLESS. One needs only to travel the interstate highways in California to understand what I would consider to be the critical aspect of having properly maintained and operated vehicles. Many of the highways in the southern California area have a very heavy use by interstate vehicles at speeds that are nowhere near 55 miles per hour.

And I have a real concern because once one of these vehicles does find itself out of control, it can, in many instances, do quite a bit of damage and create problems even resulting in death. And we take our aviation field seriously, we take other areas of our transportation network seriously. I don't know that we are addressing this area to the degree that we should.

I compliment the Congress for getting involved in 1984 with what is referred to as a program encouraging State development of programs for purposes of clearing up the safety aspect. But then, the GAO is somewhat critical here and it says that:

> The Bureau has not developed clear, specific goals and objectives, defined the federal, state roles and responsibilities, established program information needs, developed a program-monitoring mechanism, selected methods for evaluating program performance.

Those would appear to be pretty basic building blocks. Is the GAO taking too much for granted? Are they not objective enough or too objective?

Mr. PIERSON. I think their assessment is correct, but, after working very hard to obtain that legislation and those authorizations and appropriation of those funds, we were under a good deal of pressure to get the program launched. The States were quite en-

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thusiastic about it and we probably did less than an orderly progression into the program.

On the other hand, we are satisfied that the States are making good use of those moneys and we are sure that subsequent audits of the program will document that. But I agree that we did not have laid out in great detail specific roles and the long-term plan; we had very generalized objectives and goals, and we did that by incorporating them into regulations governing the offering of the grants and the qualification of States for those grants. But there's no question, we could have been more specific.

Mr. McCANDLESS. How do you categorize this report in its overall aspect with respect to improving the position both at the investigatory enforcement and then the combined State and Federal role? How do you catalog this report?

Mr. PIERSON. Well, I would categorize the report as fair. The investigation that resulted in the report was done over a 2-year period, and many of the things that they have found over that 2-year period, including some of the recommendations, have simply been overtaken by events. There was a major task force effort by the Federal Highway Administration to establish not only reorganization of the structure, but also to develop a new directive system, policy manuals, and the other kinds of things that are usually building blocks for a sophisticated program.

Mr. McCANDLESS. Now this report is dated September 5, 1985. Based upon what you have just said, the GAO probably started this investigation sometime in the fall of 1983.

Mr. PIERSON. That's correct.

Mr. McCANDLESS. Well, given that time line and what you have just stated, how much of the recommendations to date would you say—what percentage—have been implemented or addressed by those parties involved and responsible?

Mr. PIERSON. Oh, I would say 40 percent. There still is a good deal to be done. Many of the changes are going to take time. As an example, they were critical about our failure to do quality review of the work of our inspectors, and frankly, prior to the reorganization this spring we were in the posture of having to request that things be done. If we were going to criticize work done by the field we had to do it in writing, and we got very little feedback—so there is a recognition of that problem.

We think the problem is resolved now because of the direct reporting. We have met with all the regional directors, we have explained very carefully to them that national uniformity, consistency, and adherence to the approved procedures is mandatory. They, in turn, have met with the officers in charge in each of the States and have conveyed that message to the individual agents. We are satisfied that we are getting much more uniformity in the way in which we do our work, than we were before the reorganization.

Mr. McCANDLESS. What are you doing to refine this State-Federal relationship, which is a natural extension of your manpower beyond that which you are able to acquire?

Mr. PIERSON. We had meetings with the States on a triregional basis, a third of the States in each of three meetings. We have their views and inputs and we are in the process of issuing new guidelines and directions for the program.

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Mr. McCANDLESS. Do those guidelines for the program pretty well address what the GAO considered to be the shortcomings of the current system?

Mr. PIERSON. Yes, sir; they will do more in the area of role definition and deal more with the long-term objectives rather than the short-term objectives as we had in the past.

Mr. McCANDLESS. I must say in all candidness that it doesn't seem to make any difference what the subject matter is of the relationship between the Federal Government, and local government, and State government; there has always been a problem of defining the relationship, what the Federal Government expects. States and local government interpret what could be considered very gray areas. Later, audits take place or relationships are strained because, "Well, we didn't mean it this way." "Well, we didn't know what you meant because you didn't tell us what you meant." As a result, the importance of the relationship and the objectives of the subject matter kind of fall through the cracks.

And as one who came from another level of government and experienced this and has the Band-Aids to show you, I can appreciate the concern. And I want to now in this role emphasize what I consider to be the need to clarify those relationships.

Mr. PIERSON. Thank you, sir. And we believe we have a good role model to follow because we are in the Federal Highway Administration, and the roads construction program in this country was done under a Federal-State partnership. There are some very good aspects of that that I think we can follow, and maintain that delicate balance of each of us doing our respective roles and not getting at cross-purposes.

Mr. McCANDLESS. Thank you, Mr. Pierson. Thank you, Madam Chairwoman.

Mrs. COLLINS. Thank you.

Mr. Pierson, we are going to suspend just for a few minutes, if you don't mind. We have a quorum here and we are trying to get some legislation out. So if you will just bear with us for a few minutes, then we will continue with our hearing.

[Recess taken.]

Mrs. COLLINS. Thank you very much, Mr. Pierson, for bearing with us while we did a little necessary committee business, since we had our quorum present.

Mr. Kleczka.

Mr. KLECZKA. Thank you. Mr. Pierson, I understand there are some 10,000 carriers that have been rated satisfactory but have never been checked. How did this occur?

Mr. PIERSON. In 1980, when we converted from the hard copy, single document handling process to ADP, the question came up about what to do with some 17,000 carriers upon whom we had nothing other than their operating authority in the file. In order to get the system up and running, we made a decision to examine those files on a case-by-case basis and, if there was no derogatory information, to give them a satisfactory rating.

Then as information came in or as they met selection criteria for audit, then, following that audit, a new rating would be assigned to them.

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Mr. KLECZKA. So out of the 10,000, how many have actually been followed up on?

Mr. PIERSON. We do not know in any definitive way. Our estimate is that probably half of them have been subject to audit since 1980.

Mr. KLECZKA. So there are probably still 5,000 out there that just went through the file audit?

Mr. PIERSON. That's correct.

Mr. KLECZKA. Don't you think those 5,000 deserve a followup, also? There's a manpower problem?

Mr. PIERSON. Yes; there is a question of the number of audits that we can perform in a particular year. Certainly, our selection criteria point out those who by the evidence and our records show that there are particular risks, and so those are targeted.

And so there are also emphasis areas in hazardous materials waste transportation and those sort of things that often take higher priority than an unaudited carrier on whom we have no derogatory safety information.

Mr. KLECZKA. We are also told that since 1980, of the 3,500 audits about 10 percent of the audits resulted in unsatisfactory ratings. What has happened to those 3,500 carriers which have been rated unsatisfactory?

Mr. PIERSON. When a carrier is rated unsatisfactory, several things happen. One of them is that the investigating auditor makes a recommendation for a followup action based on his findings, based on the history of noncompliance, based on the severity of the types of violations which they find. They may recommend a warning letter, they may recommend civil or criminal prosecution, or they may recommend that we seek revocation of authority. Those recommendations are a part of their report, and they are processed through our regional office and our headquarters. So there would have been a number of those which would have had any of those range of sanctions taken against them.

Mr. KLECZKA. Do you know what the number is of the various sanctions for the 3,500?

Mr. PIERSON. No, sir, I do not.

Mr. KLECZKA. We're also told that when a carrier receives an unsatisfactory rating, they withdraw their application. Is that a common practice?

Mr. PIERSON. That has happened from time to time because if their feeling is that based on their safety record the Commission would not look favorably on their application, they simply withdraw it.

Mr. KLECZKA. But do they then not operate on their previous license, or do they cease?

Mr. PIERSON. No; they would continue to operate on their existing license.

Mr. KLECZKA. So what is the sanction, then, for the unsatisfactory rating?

Mr. PIERSON. The unsatisfactory rating is not the trigger mechanism for an enforcement case; it is the trigger mechanism that there is something wrong with the carrier's operation that needs to be remedied. Indeed, we have entered into orders, compliance

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orders, with carriers and we have given them an opportunity to bring those operations into compliance.

Then, when they believe that they have instituted those remedial actions and some period of time, 3 to 6 months, have gone by, they may request—and we will go back and do—a reaudit. If at that time they are back in compliance then we will change their rating. If they are not, then we will consider enforcement sanctions.

Mr. KLECZKA. For a carrier who is rated unsatisfactory and then withdraws its application, how long is the previous license authority valid?

Mr. PIERSON. There is no limitation on how long they can operate on their previous license.

Mr. KLECZKA. Isn't that just a way to skirt the unsatisfactory rating? Something doesn't seem right here, that they can just bounce back in operation by withdrawing the application.

Mr. PIERSON. I think the point is that they are before the Commission because of a business opportunity and they are seeking some expansion of their authority. Whether the Commission denies it or they withdraw it, the net result is they are not able to take advantage of those new business opportunities. In many cases, that in and of itself is inducement for them to make corrections in their operations.

Another very important influence, of course, is the spiraling cost of insurance. More and more insurance companies are asking the agency for safety fitness ratings in doing pricing considerations on insurance. So the business of being an unsatisfactory or a conditional carrier is of great concern to the carriers because it affects them in one place where they really pay attention, and that is the pocketbook.

Mr. KLECZKA. OK, thank you. Thank you, Madam Chairwoman.

Mrs. COLLINS. Mr. Martinez.

Mr. MARTINEZ. I am sitting here trying to understand all of this because if I am understanding the issue correctly, there may be a lot of unsafe carriers out there traveling our highways. That really disturbs me because I have driven back and forth across this country about six times now, and on each occasion that I have driven back and forth—more than one time on each of those occasions; more than five times on each occasion—I have had one of these big trucks roll up behind me as if it wanted to push me off the road. And I hate to think that they are unsafe in some way. Getting as close as they do to other drivers they could cause some sort of an accident.

And I think in terms of that, if you have given a license to a carrier that is unsafe and that carrier causes a tragic accident where there are lives lost, would the Government become liable, or that agency become liable if somebody were to sue because we had licensed an unsafe carrier?

Mr. PIERSON. I think probably the Interstate Commerce Commission witnesses will be more able to answer that question. We are in the safety regulatory business and we do furnish safety fitness information to the Interstate Commerce Commission and they use that information in making their licensing decisions. But in this case, there's no question, we have an influence simply by virtue of furnishing the safety rating.

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Certainly, the risks inherent in highway transportation are of great concern to us, and yet we feel that over the past 5 years if there were carriers who were given a satisfactory safety rating that were very high risk carriers, they would have come to our attention by this time.

Certainly, we get reports of accidents. We do our own inspection work and we have reports from cooperating State agencies, and we feel that there would be very few that could be very high risk carriers that would get by without coming to our attention, or certainly that of the States.

Mr. MARTINEZ. Well it seems then that you are satisfied with it even though only 15 or 20 percent of all the carriers have had these safety ratings assigned to them because they have been audited—that that still doesn't present any great cause for alarm or worry that the majority of the 85 to 80 percent of the carriers that are out there that have not been audited are safe.

Mr. PIERSON. No question in our mind that there are a great number of trucking companies and users of trucks in this country that make an adequate and positive safety investment. On the other hand, there are those who choose not to, and those seem to be the problem carriers, and those are the ones we attempt to target and address our resources to.

Mr. MARTINEZ. What percentage would you say they are?

Mr. PIERSON. We are looking at perhaps 2½ percent of the carriers each year in terms of safety management audits. Probably we ought to be doing twice as many as we are doing now, and indeed, the design of the State Grant Program is to get the States more heavily involved in our mutual problem and to get from them the data which will help us to better target unsafe carriers and to free up some of the time of the Federal inspectors from the hands-on inspection in order to devote more time to the audits.

I think that's important because the State function generally is the curing of an acute problem. They have a violator, an unsafe carrier, or driver, I should say, and vehicle, and they require them to post bond or make arrests and adjudicate that problem.

The safety management audit is one in which we go to the carrier's central place of business and examine their whole system, and as a result of that examination, induce changes——

Mr. MARTINEZ. By whole system, do you mean the whole system of the truck itself?

Mr. PIERSON. Yes; the whole system of the carrier operator—its terminals in all States.

Mr. MARTINEZ. Terminals?

Mr. PIERSON. Yes; because we are not limited to State boundaries. And we induce or influence changes which will affect the safety of those operations out into the future. So we see that as a fairly clean and definitive role distinction between our activities and those of the States.

Mr. MARTINEZ. How much time does it take to conduct an audit?

Mr. PIERSON. It depends on the size of the company, sir. A sole proprietor can be done in 4 hours. A transcontinental carrier would take, as a minimum, about 5 days.

Mr. MARTINEZ. Is there any possibility of speeding up the process, other than—I know you're restricted by the number of person-

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nel you have and your budget limitations. Is there any way to speed the process up so we could eventually get to a point where rather than only 15 or 20 percent being audit, that only 15 or 20 percent were not?

Mr. PIERSON. Well obviously, we have been in this business almost 50 years and there have been a number of refinements and streamlining done in the audit process over time—but it is a process of interviewing people, examining records and reconstructing activities and looking for missing records and fraud and those sort of things, and it is time consuming.

My feeling is that better targeting would be more of an advantage than really shortening the length of the audit.

Mr. MARTINEZ. Better targeting?

Mr. PIERSON. Or the quality of the audit. Yes, sir.

Mr. MARTINEZ. Thank you. Thank you, Madam Chairwoman.

Mrs. COLLINS. Mr. Owens.

Mr. OWENS. Mr. Pierson, this administration has emphasized deregulation which I think has created more carriers. Has it communicated to you in some way a message, admission statement, et cetera, that it wanted you also to stay off the carriers' backs, get government off the carriers' backs by doing less regulation from the point of view of safety?

For example, is your budget and the number of personnel that you have now greater or less than it was in 1981?

Mr. PIERSON. Well, let me answer the last question first. The answer is it is less, but——

Mr. OWENS. You have fewer people to do these audits than you had in 1981?

Mr. PIERSON. That's correct.

Mr. OWENS. You have more companies to inspect, or carriers?

Mr. PIERSON. That's correct. Yes, sir. But it is a decision of this administration, instead of expanding the Federal forces, to use the grant program to expand the State forces and allow us to concentrate more on the multistate, high risk carriers while the States deal with the shorthaul carriers and the intrastate carriers.

Mr. OWENS. Did the process of deregulation create more multistate carriers?

Mr. PIERSON. Yes, sir. Just about a doubling. I would say, according to our records, something on the order of 31,000 carriers now in existence when there were only 17,000 in 1980—and that has been a factor in our work.

On the other hand, according to the statistics which we keep in terms of numbers or percentage of out-of-service by class of vehicle—that is, exempt, private, for hire—by the numbers of defects per vehicle, those sort of indicators, we do not see a connection between regulation and deregulation in terms of safety fitness.

Mr. OWENS. You have more to inspect and fewer people to inspect, and you don't see a relationship?

Mr. PIERSON. Oh, I see that relationship. My statement was I don't see a relationship—any change in the safety posture of carriers attributable to deregulation. We keep year-to-year records on our roadside checks and those statistics, in terms of the percentage of vehicles ordered out of service, in terms of the number of defects

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per vehicle, have not changed; they are fairly flat prior to 1980 and through today.

Mr. OWENS. But the percentage of the existing carriers who get inspected are far less.

Mr. PIERSON. They are in terms of the number that we can audit, in terms of the general safety audits. That is correct.

Mr. OWENS. The State Grant Program—when did that go into effect?

Mr. PIERSON. It began in 1983, and with some 26 States coming in for first-year grants, which was just a 6-month period, and I believe there are 29 now in the program in this fiscal year.

Mr. OWENS. For those 29 States is the program now fully operational?

Mr. PIERSON. Yes, sir. They have trained people, they are fielding people and those people are doing inspections.

Mr. OWENS. How long have they been fully operational?

Mr. PIERSON. Well, in many cases, they already had an inspection program and the grant funds enabled them to expand the level of activity in which they were engaged—so the ones who came into the program early already had a program of some scale, but at least—and this was an opportunity for them to bring it up to strength.

Mr. OWENS. So for about a year the States have had an enhanced program to help take some of the burden off your agency.

Mr. PIERSON. Yes, sir.

Mr. OWENS. No further questions, Madam Chairwoman. Thank you.

Mrs. COLLINS. Thank you very much, Mr. Pierson, for your responses to our questions.

Our next witness is going to be Mr. Reese H. Taylor, Jr., who is the Chairman of the Interstate Commerce Commission. Mr. Taylor, would you come forward, please?

Mr. Taylor, you may begin your testimony but would you tell us who is accompanying you, please. for the record?

Mr. TAYLOR. Yes. I was going to ask you if you would let me do that, please, Madam Chairwoman. And let me say we are delighted to be here and let me begin by introducing those at the table with me this morning.

On my left is Commissioner Andrew Strenio, and on my immediate right is Bernie Gaillard who is the Director of our Office of Compliance and Consumer Assistance, and on his right is Howie Sporn who is the Director of the Motor Section of our Office of Proceedings.

Mrs. COLLINS. Thank you.

STATEMENT OF REESE H. TAYLOR, JR., CHAIRMAN, INTERSTATE COMMERCE COMMISSION, ACCOMPANIED BY ANDREW J. STRENIO, JR., COMMISSIONER; BERNARD GAILLARD, DIRECTOR, OFFICE OF COMPLIANCE AND CONSUMER ASSISTANCE; AND HOWARD SPORN, DIRECTOR, MOTOR SECTION, OFFICE OF PROCEEDINGS

Mr. TAYLOR. We really do appreciate the opportunity to testify today to present the views of the Interstate Commerce Commission

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regarding the important subject of motor carrier safety. Although the Commission no longer has direct jurisdiction in this area, the safety of motor carriers which operate under Commission authority is a continuing concern of this agency, and we make every effort to ensure that carriers which receive Commission authority will operate in a safe manner. In my testimony today, I will discuss the Commission's current procedures for determining the safety fitness of applicants for operating authority and the steps we are taking to implement the safety fitness provisions of the Motor Carrier Safety Act of 1984.

First, let me describe our present procedures for determining whether applicants for motor carrier authority have demonstrated that they are fit with respect to safety. Since the Bureau of Motor Carrier Safety [BMCS], within DOT has primary responsibility in the safety area, cooperation between our agencies is absolutely essential when the Commission is examining an applicant's fitness for operating authority. In the fall of 1982, former Secretary Drew Lewis and I signed a new memorandum of understanding and agreement which formalized arrangements for the sharing of information and participation by DOT in safety-related fitness and revocation proceedings before the Commission.

And I might add, Madam Chairwoman, if the committee doesn't have a copy of that agreement we would like to furnish it for the record. I think you should have that.

Mrs. COLLINS. Thank you.

Mr. TAYLOR. Under this agreement the Commission requests the safety ratings of applicants from BMCS before making a determination of fitness. If an applicant for temporary authority has an unsatisfactory safety rating, the Commission will not issue the carrier authority unless there is an urgent transportation need which we detemine outweighs the safety consideration.

Applications for permanent authority are handled somewhat differently. If BMCS is not satisfied as to the safety fitness of the carrier applying for permanent authority, it can petition to intervene in the case. The Commission's Office of Compliance and Consumer Assistance can also raise the issue of safety fitness and ask BMCS to assist in presenting safety evidence to the Commission. In evaluating the fitness of applicants with records of past safety violations, the Commission observed a well-defined and consistent set of factors to predict future safety compliance.

As you know, section 215 of the act requires the Department of Transportation, in cooperation with the Interstate Commerce Commission, to conduct a rulemaking proceeding to establish a procedure for determining the safety fitness of owners and operators of commercial motor vehicles. In addition, section 215(d) provides that, if an applicant for motor carrier operating authority does not meet the new safety fitness requirements, the Commission must find the applicant unfit and deny the application.

The Commission has taken a number of steps to implement these provisions of the new safety legislation. Members of the Commission staff—and I joined them at their first meeting—have participated in a series of meetings with the staff from the Bureau of Motor Carrier Safety concerning the safety fitness certification procedures and interagency coordination of the revised standards. At

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the request of BMCS, the Motor Section of the Commission's Office of Proceedings, headed by Mr. Sporn, has submitted informal comments to a draft notice of proposed rulemaking implementing the safety fitness rating provisions of section 215. We will continue to consult with the Department of Transportation as this rulemaking is developed further.

Moreover, the Office of Proceedings has conducted a thorough evaluation of Commission licensing and fitness regulations, procedures, and application materials to identify those rules and practices that must be revised to conform with the new safety certification procedures. This evaluation has been reviewed by OCCA, our Office of Compliance and Consumer Assistance. Actual revision of Commission regulations and practices will occur following DOT's implementation of final rules regarding the safety fitness certification procedures mandated by the act.

The subcommittee has expressed concern regarding the role of unverified affidavits in safety fitness determinations, and in appeals of adverse safety fitness findings by the Commission under the new procedures required by the act. Our preliminary implementation discussions with BMCS, as well as our advance review of the safety regulations being formulated by DOT, confirm that prelicensing safety certification and successful appeals of adverse safety fitness findings will require confirmation assurances from BMCS of safety fitness information and cannot be premised on an applicant's assertion alone.

The Commission also recognizes that its safety fitness responsibilities do not necessarily end with the granting of a certificate to operate as a motor carrier. A continuing safety monitoring system presently is in place under the 1982 memorandum of understanding and agreement between the Commission and DOT. It provides that BMCS may petition the Commission to revoke or suspend the operating authority of a carrier determined to have violated a safety compliance order. Presumably, the enhanced safety monitoring conducted under the safety fitness standards mandated by the act will permit the Commission to continue to rely principally upon BMCS to petition for revocation of the authorities of noncompliant carriers.

In closing, I would like to reiterate the Commission's concern regarding the safety of motor carriers that operate on our Nation's highways. As we move toward a more competitive environment for the trucking industry, we must remain committed to doing all that we can to ensure that carriers operating under Commission authority continue to provide transportation that is safe as well as economical.

And on that point I just perhaps would add a personal note. I've heard the word "deregulation" mentioned a couple of times this morning. I certainly realize, and I know my colleagues all realize, that the possible "Achilles heel" of deregulation is if it becomes perceived as tantamount to fostering unsafe trucking operations on the highways. So we who are interested in responsible deregulation are very, very interested as well in making absolutely certain that operations on the country's highways are very, very safe.

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It's an important concern of ours, and we welcome this opportunity to be here today to discuss the matter of safety with you because it's a very high item on our agenda at the Commission.

Thank you again for the opportunity to present our views. We have a full statement which I believe has been made a part of the record. We'll be glad to answer any questions you may have, although my colleague, Mr. Strenio, may have a few preliminary remarks if you would indulge him.

[The prepared statement of Mr. Taylor follows:]

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STATEMENT OF REESE H. TAYLOR, JR.
CHAIRMAN, INTERSTATE COMMERCE COMMISSION
BEFORE THE GOVERNMENT ACTIVITIES AND TRANSPORTATION
SUBCOMMITTEE OF THE HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
ON
MOTOR CARRIER SAFETY FITNESS

September 12, 1985

I appreciate the opportunity to testify today to present the views of the Interstate Commerce Commission regarding the important subject of motor carrier safety. Although the Commission no longer has direct jurisdiction in this area, the safety of motor carriers which operate under Commission authority is a continuing concern of this agency, and we make every effort to ensure that carriers which receive Commission authority will operate in a safe manner. In my testimony today, I will discuss the Commission's current procedures for determining the safety fitness of applicants for operating authority and the steps we are taking to implement the safety fitness provisions of the Motor Carrier Safety Act of 1984.

First, let me describe our present procedures for determining whether applicants for motor carrier authority have demonstrated that they are fit with respect to safety. Although entry into the trucking industry has been liberalized under the provisions of the Motor Carrier Act of 1980, the willingness and ability to conduct safe operations has remained an important element of the fitness test that all applicants for motor carrier authority must satisfy in order to receive a certificate. Since

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the Bureau of Motor Carrier Safety (BMCS) within DOT has primary responsibility in the safety area, cooperation between our agencies is essential when the Commission is examining an applicant's fitness for operating authority. In the fall of 1982, former Secretary Lewis and I signed a new Memorandum of Understanding and Agreement which formalized arrangements for:

(1) sharing of information;

(2) availability of direct computer access by Commission staff to DOT safety data; and

(3) DOT participation in safety-related fitness and revocation proceedings before the Commission.

The Memorandum was the result of extensive efforts to coordinate the activities of our agencies in this area.

Under this agreement, the Commission requests the safety ratings of applicants from BMCS before making a determination of fitness. If an applicant for temporary authority has an "unsatisfactory" safety rating, the Commission will not issue the carrier authority unless there is an urgent transportation need which we determine outweighs the safety consideration. If the safety rating is "conditional" or reflects "insufficient information", the Commission may grant the operating authority, and may condition the grant upon compliance with applicable safety regulations. If it is later found that the carrier is not in compliance with those regulations, BMCS may recommend that we revoke the temporary authority and we may do so without further proceedings.

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Applications for permanent authority are handled somewhat differently, and that procedure itself has changed in recent months. Previously, if BMCS was not satisfied as to the safety fitness of a carrier applying for permanent authority, it could petition to intervene in the case. The Commission's Office of Compliance and Consumer Assistance (OCCA) could also raise the issue of safety fitness and may have asked BMCS to assist in presenting safety evidence to the Commission. When appropriate, the Commission would assign the application for oral hearing in order to consider the evidence more fully. If questions were not raised regarding an applicant's safety fitness, the Commission would determine the carrier's fitness based on the entire record, including the safety rating obtained from BMCS. In certain limited instances, the Commission granted authority despite an "unsatisfactory" safety compliance rating where the record otherwise presented compelling evidence of the applicant's present conformance with safety standards and future intent to maintain operational fitness. In evaluating the fitness of applicants with records of past safety violations, the Commission observed a well-defined and consistent set of factors to predict future safety compliance:[1]

-- the nature and extent of the applicant's past violations;

-- any mitigating or extenuating circumstances surrounding the violations;

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[1] See Associated Transport, Inc., Ext. - T.V.A. Plant, 125 M.C.C. 69, 73 (1976).

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-- whether the applicant's conduct represents a flagrant and persistent disregard of pertinent safety regulations;

-- whether the applicant has demonstrated sincere efforts to correct past safety violations; and

-- whether the applicant is willing and able to comport in the future with the statute and applicable regulations.

Any applicant with an "unsatisfactory" BMCS rating was required to introduce highly persuasive evidence concerning each of these factors in order to satisfy the Commission of its overall safety fitness. In those limited instances where applicants were able to surmount "unsatisfactory" BMCS ratings with other safety assurances, the Commission often granted only limited-term authority as a precaution to allow monitoring of the involved carriers' prospective safety compliance.

This approach to licensing and the safety-fitness determination has undergone review by the Commission in recent months and certain procedural changes have been made in anticipation of the implementation of the Motor Carrier Safety Act of 1984. As you know, section 215 of the Act requires the Department of Transportation, in cooperation with the Interstate Commerce Commission, to conduct a rulemaking proceeding to establish a procedure for determining the safety fitness of owners and operators of commercial motor vehicles. In addition, section 215(d) provides that, if an applicant for motor carrier operating authority does not meet the new safety fitness requirements, the Commission must find the applicant unfit and deny the application.

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Consistent with the safety objective these statutory changes seek to promote, OCCA has been directed to bring to the Commission's attention all applicants with "unsatisfactory" safety ratings, regardless of whether DOT seeks to intervene in the proceeding. When the rating is based on a recent safety management audit, the Commission can proceed to its safety-fitness determination, based on information OCCA has obtained from BMCS about the audit. Considerable weight is now placed on the rating itself so the Commission, in recent months, has not granted even limited-term authority to applicants with "unsatisfactory" safety ratings.

When the applicant's "unsatisfactory" rating is based on a dated safety management audit, the Commission will seek more current evidence of safety performance before making a safety-fitness determination. Thus, even if the applicant is otherwise fit and has demonstrated a public need for the proposed service, any grant of authority will be conditioned upon applicant demonstrating that its safety performance is no longer unsatisfactory. The applicant will not be issued a certificate or permit and cannot operate under the authority sought until he has obtained an upgraded safety rating from BMCS or presented compelling reasons why he should be found fit despite the "unsatisfactory" safety rating. Compelling reasons would include ministerial error by BMCS or an inability over an extended period to secure an audit of the upgraded operations that applicant asserts are now safe. BMCS and OCCA would have an opportunity to

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challenge any evidence presented by applicant. To date under this procedure, compelling reasons have not been found in any of the cases and authority has not been issued in the absence of an upgraded safety rating.

This approach to licensing is now favored by the Commission because it promotes both safety and efficient management of the Commission's caseload. Furthermore, it is an interim procedure that is consistent with the objectives of the Motor Carrier Safety Act.

In addition to adopting this interim procedure, the Commission has taken other steps in preparing to implement the provisions of the new safety legislation. Members of the Commission staff have participated in a series of meetings with staff from the Bureau of Motor Carrier Safety concerning the safety fitness certification procedures and interagency coordination of the revised standards. At the request of BMCS, the Motor Section of the Commission's Office of Proceedings has submitted informal comments to a draft notice of proposed rulemaking implementing the safety fitness rating provisions of section 215. We will continue to consult with the Department of Transportation as this rulemaking is developed further.

Moreover, the Office of Proceedings has conducted a thorough evaluation of Commission licensing and fitness regulations, procedures, and application materials to identify those rules and practices that must be revised to conform with the new safety certification procedures. This evaluation has been reviewed by

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the Office of Compliance and Consumer Assistance and has been revised in response to specific safety monitoring concerns raised by that Office. Actual revision of Commission regulations and practices will occur following DOT's implementation of final rules regarding the safety fitness certification procedures mandated by the Act.

The Subcommittee has expressed concern regarding the role of unverified affidavits in safety fitness determinations and in appeals of adverse safety fitness findings by the Commission under the new procedures required by the Act. Our preliminary implementation discussions with BMCS, as well as our advance review of the safety regulations being formulated by DOT, confirm that pre-licensing safety certification and successful appeals of adverse safety fitness findings will require confirmation assurances from BMCS of safety fitness information and cannot be premised on an applicant's assertion alone.

In the case of existing carriers seeking expansion of their authority, this information may be verified by reference to the computerized BMCS reporting system, readily accessible to the Commission. First-time applicants with no existing interstate operating authority -- and presumably no established safety rating with BMCS -- will be required to apply for a provisional safety rating prior to seeking ICC authority. In either instance, the Commission will not be able to act upon a licensing request prior to receiving BMCS assurance that the involved applicant has not been accorded an "unsatisfactory" fitness rating.

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The Commission will entertain appeals of adverse safety fitness findings that have prevented the issuance of operating authority. Basic Commission policy has been that fitness inquiries in licensing proceedings are prospective in nature and not punitive, and this policy will continue under the new safety fitness standards. Consistent with the purpose of the Act, adverse fitness findings will be considered inducements to improved safety and, thus, will be appealable on the basis of corrective action on the part of applicants. However, as in the case of initial applications, we cannot make a favorable fitness determination on the basis of an applicant's affidavit alone. Successful appeals on the safety fitness issue must contain direct assurances from BMCS that factors contributing to a prior "unsatisfactory" safety rating have been rectified. We anticipate that, generally, to obtain such assurances applicants will have been evaluated in a follow-up BMCS safety audit or will have resubmitted their request for a provisional safety rating.

The Commission also recognizes that its safety fitness responsibilities do not necessarily end with the granting of a certificate to operate as a motor carrier. A critical aspect of the Act's safety structure is the subsection 215(a)(1) requirement subjecting motor carriers to "specific initial and continuing requirements... to prove safety fitness" (emphasis added). This implies a collaborative oversight of carrier safety fitness ratings by the Commission and DOT to ensure that the safety compliance standards initially imposed on motor carrier

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applicants are sustained throughout the course of their service to the shipping public.

A continuing safety monitoring system presently is in place under the 1982 "Memorandum of Understanding and Agreement" between the Commission and DOT. It provides that BMCS may conduct proceedings against carriers found to be in violation of the Federal Motor Carrier Safety Regulations. These proceedings may result in compliance orders binding the respondent carrier to safety performance requirements. The Memorandum also provides that BMCS may petition the Commission to revoke or suspend the operating authority of a carrier determined to have violated a safety compliance order. Presumably, the enhanced safety monitoring conducted under the safety fitness standards mandated by the Act will permit the Commission to continue to rely principally upon BMCS to petition for revocation of the authorities of non-compliant carriers. Where such a petition for revocation has not been introduced, however, the Commission may be alerted to a carrier's unacceptable safety record by other means -- for example, by complaint of a shipper or competing carrier. Upon verification of such information by BMCS, the Commission would consider instituting revocation proceedings on its own motion, consistent with the provisions of 49 U.S.C. 10925.

In closing, I would like to reiterate the Commission's concern regarding the safety of motor carriers that operate on our nation's highways. As we move toward a more competitive environment for the trucking industry, we must remain committed to doing all that we can to ensure that carriers operating under Commission authority continue to provide transportation that is safe, as well as economical.

Thank you again for this opportunity to present the Commission's views in this matter. Now, I would be glad to answer any questions you may have.

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Mrs. COLLINS. Thank you very much for your statement. Those bells that you just heard ring are the second set of bells; we have a vote on the floor and we are going to recess for about 10 or 15 minutes and come right back.

[Recess taken.]

Mrs. COLLINS. This hearing of the Government Operations Subcommittee on Government Activities and Transportation will reconvene at this time.

Mr. TAYLOR. With your permission, Madam Chairwoman, my colleague, Commissioner Andy Strenio, has some very brief comments he would like to make.

Mrs. COLLINS. Sure.

Mr. STRENIO. Chairwoman Collins and members of the committee, thank you for the opportunity to appear before you this morning. I asked to accompany my colleague, Chairman Taylor, because of my deep interest in the safety issues you are addressing.

In the interest of time, I have not prepared an individual statement; however, please permit me three brief observations. First, I fully support the Commission testimony. Second, when it comes to safety, I think there are no regulatory or deregulatory positions, but rather, only a single commonsense position that calls for caution and prudence.

Third and finally, I think this hearing is a positive development. I hope that we will be able to answer satisfactorily your questions about the ICC's role in motor carrier safety areas. In turn, we are greatly interested in the insights and guidance you and your colleagues may have on this topic for us.

[The prepared statement of Mr. Strenio follows:]

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Interstate Commerce Commission
Washington, D.C. 20423

September 19, 1985

The Honorable Cardiss Collins
Chairwoman
Government Activities and
Transportation Subcommittee
Committee on Government Operations
Room B-350-A-B
Rayburn House Office Building
Washington, D.C. 20515

Dear Chairwoman Collins:

Thank you for the opportunity to appear before the Subcommittee on September 12, 1985, during your hearing on motor carrier safety. As I stated at the hearing, I endorse the Interstate Commerce Commission's (ICC) prepared statement in its entirety. However, because time ran out before I was able to offer testimony at the hearing, I wish to take this opportunity to submit these additional comments. Accordingly, I would greatly appreciate it if you would include this letter as part of the hearing record.

The Motor Carrier Safety Act of 1984 calls for new procedures in the area of motor carrier safety. The primary responsibility for the establishment of those procedures was assigned to the Department of Transportation (DOT), while the ICC was given the secondary responsibility of modifying its licensing forms and procedures to conform to DOT's revisions. The ICC remains fully committed to perform its responsibilities in as timely and thorough a fashion as is possible. Furthermore, there is every reason to expect that the new procedures, when implemented, will substantially redress the shortcomings inherent in the present situation of divided responsibilities and resources between the ICC and the Bureau of Motor Carrier Safety (BMCS) at DOT.

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In particular, the lines of communication between the BMCS and the ICC will be completely open, especially with regard to ICC access to the safety rating data base. In addition, the ICC will soon eliminate the ambiguity that exists in the current licensing application form. The current form asks carriers already holding certificates whether they are in compliance with DOT safety regulations, and asks potential new entrants whether they are familiar with DOT's safety regulations and intend to comply with those regulations. Unfortunately, the current form does not explicitly ask for an applicant's most recent BMCS safety rating. This deficiency will be corrected, thus eliminating any potential for misunderstanding or misrepresentation by applicants. All answers will be cross-checked by ICC staff with the ratings filed in BMCS' computers.

Of course, some issues will remain even after implementation of the Safety Act is completed. For example, the number of revocation proceedings against certificated carriers with unsatisfactory safety ratings may remain very low. But there are several valid reasons for the small number of these cases. As DOT has indicated, they view revocation as a process of last resort because of judicial constraints. A carrier's certificate is considered legally as a property right, and there are stringent due process requirements involved when the government seeks revocation of those rights. A recent revocation case for alleged consumer fraud, for example, has taken over 10 years at the ICC and before the D.C. Court of Appeals, and the litigation has not yet ended. Speedier steps must be taken when safety is in question. In light of the limited resources at the ICC, and given BMCS' ability to summarily take a number of strong measures (including the impoundment of vehicles), it seems prudent to concentrate ICC staff time on other enforcement tools.

In addition, it has been noted that the ICC is reluctant for good reason to initiate revocation proceedings without DOT's participation. The ICC is the correct forum for revocation proceedings, but the role of BMCS is critical in the prosecutorial process, because BMCS is the agency

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primarily charged with safety enforcement responsibilities, and it is also the agency with the ability to generate the factual information necessary for the successful handling of a revocation case.

My final point with regard to the revocation issue is that a certificate revocation does not necessarily terminate a carrier's operations; the carrier remains free to conduct operations for which no certificate is required. BMCS estimates that there are approximately 200,000 trucking companies in the United States, and only about 20 percent of these companies hold operating rights issued by the ICC [H. Rept. 98-562, 98th Congress, 1st Sess., 8-9 (1983)]. There are a wealth of trucking opportunities not requiring licensing by the ICC, including the transportation of exempt commodities, private carriage, leasing, and intrastate operations. Revocation may merely compel the carrier to redirect its operations to the unregulated sector. All factors considered, it is clear why BMCS finds revocation a less than efficacious enforcement tool. BMCS has more direct, expeditious and efficient means at its disposal to force an end to unsafe motor carrier operations.

On the question of whether unsafe carriers have a long run marketplace advantage over competitors who operate conscientiously in a safe manner, my conclusion is that they do not. A lack of preventive maintenance invariably produces higher costs for the overall upkeep of vehicles and diminishes their efficient use. Unsafe operations that result in accidents and damage to lading also increase costs for insurance, loss and damage claims, and litigation, not to mention the loss of business from prospective customers. Most transportation companies understand that it is to their competitive advantage to conduct safe operations. Of course, any companies that do not understand this will incur not only these marketplace sanctions but also possible enforcement penalties for failure to comply with safety regulations.

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All ICC regulation of motor carriage may well be eliminated soon. The Administration has now unveiled its deregulation proposal, and other bills are also under consideration (including H.R. 3222 cosponsored by Congressman DeLay of your Subcommitte). All proposals properly retain safety regulation at DOT, since-- as Chairman Taylor said last Thursday--it makes sense to have responsibility for safety regulation consolidated under one roof. The ICC is on record as supporting trucking deregulation, and I think that the transfer of our residual responsibility in this area to DOT will promote effective safety regulation in the federal sector.

In sum, I appreciate and share your concern over trucking safety, and I am convinced that your hearing has been beneficial in focusing attention on this issue. If I can be of further assistance at any time to the Members or staff of your Subcommittee, please do not hesitate to let me know.

Sincerely yours,

Andrew J. Strenio, Jr.

Andrew J. Strenio, Jr.
Commissioner

cc: All Commissioners, ICC
Kenneth L. Pierson, Director
Bureau of Motor Carrier Safety
Department of Transportation

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Mrs. COLLINS. Thank you very much.

Chairman Taylor, when we were looking into this matter of the ICC, a couple of things came before our investigators and one was—first of all, let me thank you for the cooperation your office has given us.

One is that our investigator asked the question of whether or not you kept a list of the questionable or the unsatisfactory carriers, and I believe the answer that was given to him was that that was not the case, a list had not been kept. And I wonder if a list is being kept now or if you have information about those unsatisfactory carriers.

Mr. TAYLOR. I don't think we are keeping a list as such because we really—well, would you indulge me a little background on some of this in response to that particular question? Because I think it is very important to understand at the outset that insofar as safety is concerned, we really were preempted out of that field with the formation of the Department of Transportation in 1967. They really have the primary laboring oar on safety considerations.

Likewise, the Commission has the primary laboring oar insofar as insurance matters are concerned. The only role—and that has been phased out now—that the Department of Transportation has had in insurance matters is setting the limits. But that time for the adjustment of those limits has now passed.

Both safety and insurance have ramifications insofar as first, ICC licensing on the way in to getting authority, and once you have authority they both have ramifications insofar as possible suspensions and revocations.

And one of the things I must say—and I've got some numbers for you in each of these areas. One of the things that has been a little bit difficult for us is that we have been relying upon this rating system in the interim period since the enactment of the new Motor Carrier Safety Act in 1984, while we worked with DOT to try to get the rulemakings implemented. We have been relying upon this rating system that they have over at DOT to really influence our licensing decisions.

And the thing I think that has to be understood upfront is that you can't just sit there and type up an unsatisfactory rating on the screen and then say that's tantamount to automatically meaning that that carrier shouldn't be licensed. Some of that data is stale; some of the carriers have not been audited. You brought all of that out in the earlier testimony.

And I'm sure there are probably some carriers over there who have conditional ratings and maybe don't have any ratings at all, who maybe oughtn't to have authority and perhaps aren't safe.

So somebody has to look behind whatever comes up on that screen. The rating system was not really ever intended to be the triggering device for either absolutely granting or absolutely denying an application for operating authority. We must rely on BMCS to provide us with the information behind the screen by coming to the Commission and being the expert witnesses on how those ratings were developed and what's happening to a carrier.

Now in the insurance area, on the other hand, it's really our ball game, and it's up to us to make sure that a carrier has adequate insurance when he comes in and gets his license and it's also up to

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us to make sure that uninsured carriers are not running around the highways. We have suspension and revocation procedures which we pursue on our own insofar as those are concerned.

Now specifically with reference to your question in terms of maintaining a list of every carrier at the Bureau of Motor Carrier Safety that is rated unsatisfactory, I can only tell you that we obtained—and we asked them to print up for us as of September 4 it's dated, Wednesday, 1985—a list of all of our regulated carriers who have an unsatisfactory rating over at the Department of Transportation.

And I can tell you that the results of that survey showed that there were a total of 515, and of these 515, 56 are inactive carriers; they are not conducting operations. And the Commission has no record of any kind of an MC number or any kind of a record that they're conducting in the operations on 20 more. So that's 76 of the 515, which gets you down to a total of 439.

Now, we have, Mr. Pierson said around 31,000 carriers; our numbers indicate, the best count we've been able to get of active ICC-regulated motor carriers, is approximately just under 37,000—36,935. So those 439 carriers rated unsatisfactory represents just slightly over 1 percent of the total number of regulated ICC motor carriers.

And I must say also that you've got to remember that there are probably a number of these carriers who are on this list who are actually not conducting unsafe operations. They have an unsatisfactory rating perhaps, which can go back to data that perhaps was done in 1981; some of them may have never been audited, and there are probably some carriers who are not on this list who ought to be.

So you really have to go behind the screen—the point I made earlier—to find out whether or not a carrier is conducting safe operations. And in the safety area, we really look to DOT to come to us and provide us the information because they have the responsibility.

I apologize for the long answer.

Mrs. COLLINS. No apology is needed. The thing that keeps concerning me about this whole matter is that, certainly, the Bureau of Motor Carrier Safety has a responsibility, and the mere fact of their title tells us that the bulk of that responsibility probably lies with them.

However, I am still concerned about the licensing of these carriers, and now what you're saying to me—and I want to make sure I have this right—is that a license would not be revoked or any kind of penal action taken unless the Bureau of Motor Carrier Safety had first signaled you, up until the time when whatever the new procedures are going to be. Right?

Mr. TAYLOR. No. We watch carriers. Our enforcement people out in the field are very, very concerned about safety, and safety has been very high on my agenda. So we've asked them to watch for it. But they can't make the case. And for us, particularly with a carrier who is already licensed and already in business, to try and take that authority away through a suspension or revocation proceeding requires——

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Mrs. COLLINS. Well, could you put them on notice or something? Do you do any kind of notification?

Mr. TAYLOR. They are on notice in terms of their safety rating already over at DOT. Before we can really take any action, though, we would have to go through a show-cause proceeding, and that takes quite a bit of time to make sure everybody has been afforded due process.

Mrs. COLLINS. Again, that's based on whatever the Bureau of Motor Carrier Safety has advised you; is that right?

Mr. TAYLOR. That's right. They have the people, and they have the expertise, and they can make the case. We really have been preempted out of that field ever since 1967.

And as a matter of fact, that's one of the reasons why I think it's terribly important that you have that agreement that was signed between Drew Lewis and myself which sets out how these matters are handled.

Mrs. COLLINS. I understand from staff that we have a copy of the agreement. I myself haven't seen it.

Mr. TAYLOR. There's a revocation section in it, which is what I was looking for, and it specifically provides the procedures which are to be followed, whereby DOT is given the responsibility of coming to us and presenting their case. We have to rely upon them to do that. Our people can't make the case. I mean, they're the people out in the field. We can't even put an unsafe truck, for example, to the extent we find one, out of business.

In California, for example, Congressman McCandless, we've relied on the California Highway Patrol, and they've been very, very helpful sometimes when we've had joint roadchecks with bus equipment, for example, in putting unsafe bus equipment out of business and taking them off the highways.

But the Commission itself does not have the authority to do that. DOT has the authority in the safety area. We have the main laboring oar in the insurance area, and I have some numbers on that.

Mrs. COLLINS. Well, before getting to the insurance, I want to ask a couple more questions about the safety factor. Now, I understand occasionally some carrier will misrepresent his application for the license. What do you do in a case of misrepresentation? Can you then not give them a license, or withdraw the license, or what?

Mr. TAYLOR. Well, that really is a serious problem and one of the things we're going to fix. I hope you got that out of Mr. Pierson's testimony.

Mrs. COLLINS. Well, what have you done up to this point?

Mr. TAYLOR. Up until now, if somebody has lied to us and we have some reason to think they are lying, we have endeavored to force them to come up with an affidavit or to give us some kind of evidence that in fact they are conducting safe operations, which at least our people can go out and verify. But if they lie to us, we're really——

Mrs. COLLINS. Well, who do you have to go out to verify? Do you have an auditing staff or an investigator to go out and verify that they are operating safely?

Mr. TAYLOR. If we know that somebody has, in effect, lied to us—and we did have some cases which were presented to us where—I think since the act was passed we've had a total of 34 cases where

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carriers have applied for authority and we've found they had unsatisfactory safety ratings.

Now, out of that number, however, there were I think 16 where we tried to get DOT to come in, and give us a hand, and help us put on the case, so to speak, and they declined to do so. I don't know why.

Mrs. COLLINS. Well then what happened to those 16?

Mr. TAYLOR. Those 16 wound up getting authority.

Mrs. COLLINS. Well now, see, this is the thing I can't understand. They misrepresented their application for a license which was evidently granted, and yet you don't have the authority to pull that license back based on a false application?

Mr. TAYLOR. Well, what we're going to do—let me say this—under the new——

[Mr. Taylor subsequently submitted the following information:]

At the present time, the Commission's application form for permanent operating authority does not ask the applicant if his operation has undergone a DOT safety audit or what the applicant's safety rating is. The applicant is merely required to sign a statement that it is familiar with DOT safety regulations and that it is operating in compliance with those regulations. If an applicant has received an unsatisfactory safety rating, he may have corrected the deficiencies which caused him to receive the rating. Therefore, he could very well sign the verified statement that he is in compliance with DOT safety regulations in good faith, since he believes he has brought his operation into compliance. I would also like to emphasize that very few cases have come before the Commission which involve international misrepresentation on the application.

Under the new implementing rules currently under consideration at DOT, an applicant will be required to attach a copy of the safety rating to its application for authority. Failure to do so would result in the Commission rejecting the application as incomplete. Thus, this problem will be resolved under the new rules implementing the Motor Carrier Safety Act.

Mrs. COLLINS. Answer that question. Do you have the authority to revoke that license?

Mr. TAYLOR. We can't put on a case that somebody has falsely represented something to us unless DOT intervenes and provides the safety evidence for us.

Mrs. COLLINS. But you just said that you knew of 30-something cases where this had happened.

[Mr. Taylor subsequently submitted the following information:]

We have had 34 applications since October 30 involving carriers with unsatisfactory safety ratings.

Mr. TAYLOR. I really think you've got two different questions in front of us.

Mrs. COLLINS. No, I haven't. I've got the right question; I might not have the right answer but I've got the right question. And the question is: If somebody has falsified an application for you to give them a license and based on this falsified application you have issued a license, do you have the authority to revoke that license once you find that out?

Mr. TAYLOR. We do have the authority——

Mrs. COLLINS. Have you ever revoked?

Mr. TAYLOR [continuing]. And the only way—we have six cases pending now—the only way that we can go through a revocation proceeding is to have the Bureau of Motor Carrier Safety come over and put on the case.

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Mrs. COLLINS. My question is: Have you ever revoked a license based on falsified application?

Mr. TAYLOR. I'll give you some numbers. Since the safety functions were transferred to DOT in 1967, we have been unable to track down any case——

Mrs. COLLINS. Not a one.

Mr. TAYLOR [continuing]. Any case in which a carrier's permanent authority—I'm talking about ETA's or TA's now; that's a separate matter—was revoked solely because of a poor safety record. There are six cases, however, where suspension or revocation of operating authority was sought. There have been three suspensions of operating authority for safety reasons and three are pending, seeking revocation. And let me just quickly refer to them.

In the suspension area, in 1971, upon complaint by the DOT, the Federal Highway Administration, the Commission suspended the operating authority of Safeway Trails to provide charter and special operations for a period of 30 days. The basic authority to provide regular route passenger service was not suspended.

In 1982, pursuant to a settlement agreement between the Federal Highway Administration and Ringsby Truck Lines, Inc., a portion of Ringsby's operating authority was suspended for 75 days. And in 1984, pursuant to a settlement agreement between the Federal Highway Administration and W.J. Digby, Inc., Digby's operating authority in No. MC 115825 and subnumbers thereunder was suspended for a period of 6 months, commencing July 1, 1984, and ending January 1, 1985.

Pending revocations. On May 16, 1985, DOT and the Federal Highway Administration filed a complaint docketed as No. MC-C-10969, *Federal Highway Administration* v. *M. Bulifant Trucking, Inc.*, seeking revocation or suspension of the operating authority of Bulifant. This complaint is the direct result of a request by the ICC that DOT investigate the safety compliance of this carrier based on an unsatisfactory safety record which came to the attention of the Commission in connection with an application by Bulifant for temporary authority. The complaint is pending before the Commission.

And in No. MC-C-10948, *Federal Highway Administration* v. *Controlled Carriers, Inc.*, the proceeding has been held in abeyance pending determination of Controlled Carriers' application in another matter involving the same issues of safety fitness as raised in the complaint and in which FHWA participated as a party. A division 2 decision finding Controlled Carriers unfit was served on August 16, 1985.

And *No. MC-C-10977, FHWA* v. *Trails Trucking, Inc.*, is another case which is presently pending before the Commission.

In the insurance area, where we have the responsibility, in the 11 months that have gone by of fiscal year 1985, we have had over 15,000 insurance delinquencies referred to the field staff. We have taken enforcement actions in terms of consent agreements in 482 matters, and we have sought civil injunctions in 28 matters.

In terms of revocations of operating authority; for failure to have insurance, which is our ball game to do, we don't have to go to DOT and ask them to come and put on a case in front of us, between October 1, 1983, and August 31, 1985, inclusive, the operating authority of 3,393 transportation entities were revoked for fail-

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ure to have insurance or other evidence of security on file with the Commission. This figure mainly relates to motor carrier authority since less than 1 percent of these revocations were for property brokers or freight forwarders or water carriers. So, I think in the insurance area we have taken a lot of action. And what is going to happen under this new procedure which we have worked out is that the carrier is now going to have to come in and he's going to have to tell us what his safety rating is, as part of his application as Mr. Pierson indicated. And if he represents to us that he is satisfactory when he is unsatisfactory, or if he fails to give us any information at all, his application isn't even going to be considered; it's going to be returned and rejected.

And once they have their rulemaking in place—that's the one that we're going to follow with right behind—this problem that has occurred during the interim here since October 1984, October 30 when the law became effective, and the present time isn't even going to exist anymore because we won't be litigating the question or looking to them for proof. The applicant will have to represent what his safety rating is, and if he lies it won't even be processed; it will be returned and rejected.

Mrs. COLLINS. Are you—I know you don't have everything in place at this point but I'd sure be interested in finding out as soon as you get the procedure established how you're going to determine whether or not the applicant is lying, inasmuch as you don't have any investigatory staff, et cetera. Because I have a strong feeling that people are going to come in and say, yes, we're safe, because right now what's happening is that they're sort of submitting information or when questioned they're just saying yes, we're safe, we're doing everything right, and there's nobody looking over their shoulder and there's no proof whatsoever of whether or not they're operating safely unless an investigator goes out, and the number of audits that are being done are very, very few so you don't really have a basis on which to go.

So when you get all this worked out, I'd sure appreciate knowing what it's going to be.

Mr. TAYLOR. Le me just say a couple of things about what's happening now. Emergency temporary authorities and temporary authorities are handled in the field by our field staff, and they have access to the DOT computer system. And if they find on that system that a carrier presently, right now, has got an unsatisfactory rating, that carrier does not get that emergency temporary authority or that temporary authority.

So we have access to their information and we rely upon that very heavily right now. But the problem is that if we have to make a case and we have to go through an administrative proceeding to make a finding, in effect, that we are sorry, you are unsafe, you can't have your authority or having gotten your authority we're going to take it away from you. We have to have the expertise, in effect. DOT is our expert witness and if they don't come forward and work with us, we are out of luck.

In the case of a falsified application that you were talking about, I believe that once the new procedures are in place this will not be a problem. An application will not just be able to tell us they are safe; they're going to have to tell us how they are rated at DOT.

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Mrs. COLLINS. When are those new regs supposed to be in place?

Mr. TAYLOR. They are supposed to be, by law, in place by October 1.

Mrs. COLLINS. Are they going to be?

Mr. TAYLOR. I'm sorry, it's October 30 they're supposed to be in place. Within 1 year.

And let me say a little bit about that because I know——

Mrs. COLLINS. Will they be in place?

Mr. TAYLOR. I am doubtful.

Mrs. COLLINS. When do you suspect they might be?

Mr. TAYLOR. But to do everything we could to get them going I sought, within days of the signing of that bill because we had testified on it and supported it—Senator Danforth was really one of the sponsors of it on the Senate side—I went over and met with Ray Barnhart, Federal Highway Administrator, and I set up the whole mechanism and the procedure so that they could get the whole thing rolling and going over there as quickly as possible.

And I don't know whether they're going to make it or not. I understand it's in the Secretary's office now. It's been up to the general counsel and back down again. We follow it almost on a daily basis. We're all ready to go with the conforming changes to our regulations as soon as they do theirs. So we've done everything we can to expedite not only their action, but our own.

I think when it's in place, this problem about somebody misrepresenting something to us on the application is really going to disappear. And we can't wait to have that happen.

Mrs. COLLINS. Thank you. Mr. McCandless.

Mr. MCCANDLESS. Mr. Taylor, you've kind of opened up a Pandora's Box here and I need to have some of the pieces put together so that I understand the system a little better.

I am an applicant to you for a license. I fill out an application, I sign the application. You process the application. If I understood your statement to the chairlady, if a part of that application is some type of a rating by the Department of Transportation and that doesn't turn out to be accurate, you cannot use that as a reason to deny the application?

Mr. TAYLOR. Well let me state it in a little different way. We have to make a finding that an applicant is fit, willing and able.

Mr. MCCANDLESS. We are applying—the individual is not in business. And then I don't understand how he got an unsatisfactory rating, to begin with.

Mr. TAYLOR. He probably doesn't have one if he's never been in business before. You can be a trucker who has no authority at all, you've never been in the trucking business and you're going into it for the first time, and under the new scheme of things when these rulemakings are in place, what you will undoubtedly wind up receiving is a provisional rating. You won't get an unsatisfactory, you won't get a satisfactory because you haven't any experience to base it upon.

Now you also can be already in the trucking business with perhaps some very small operating authority, maybe just on the west coast, and you want to expand, you want to go national, you want to go general commodities nationwide, or you want to get some other specific piece of authority you haven't had before. And then

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you are very apt to have a rating and you apply for that new authority or that new certificate. Based upon your prior experience with the limited authority that you have, you will have a safety rating on file at DOT.

Mr. MCCANDLESS. I understand, I understand. Now in your statement to us you said:

> Under this agreement the Commission requests the safety ratings of applicants before making a determination of fitness. If an applicant for a temporary authority has an unsatisfactory safety rating, the Commission will not issue the carrier authority unless there is an urgent transportation need.

Then you go on to say, "Which we determine outweighs the safety consideration."

There seems to be in my mind anyhow, for lack of probably getting this thing all in its proper relationship, a conflict there between what you have told the chairlady and what you are telling us now relative to this unsatisfactory rating.

Mr. TAYLOR. What you have to do is distinguish between what we call ETA's and TA's on the one hand which are handled in the field by our field staff—emergency temporary authority is the fellow who comes in and says it's an emergency situation; somebody has a job that has to be done over here and it has to be—it might be a flood or a fire or whatever; it's got some real urgency attached to it and there isn't anybody else to provide the service. And the field staff grants those authorities for a short period of time.

A temporary authority is usually granted for little bit longer period of time. Those are also done in the field.

Now what they will do is access DOT's system, they will get a rating back, and they are out in the field where this carrier is because that's where those applications are filed. And if it turns out the carrier has an unsatisfactory rating but the field can determine, for example, that that's based on an audit that occurred in 1981—and we have found a lot of those that go back that far—and since that time, in order to be convinced that they are not certificating somebody or authorizing somebody to go into business who is going to conduct unsafe operations, that this individual has been operating safely and carefully and that there is a dire emergency, only under those kinds of circumstances would they let that overrule what shows up on the DOT computer screen.

Now the permanent authorities are not handled out in the field; they are handled differently. They are handled here in the Washington office. And we also try to find out what the rating is from DOT as well. But in these cases, we really have to have DOT intervene if we are going to have an administrative proceeding on a permanent authority, be it under modified procedure or oral hearing or what, and have somebody make the case.

If DOT doesn't come over and make the case for us, when they have the rating and they have conducted the audit and they have the information and they are the expert witness who can put on the case—our guys are kind of hamstrung; there isn't much they could do because—well, they could bring it to the Commission's attention, but they don't have the evidence to make the case in an administrative proceeding, so that's been the problem.

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Mr. McCANDLESS. Let's go back to the 439 that you arrived at from your printout. Is there anything in that printout that gives the date at which the last rating—in this case unsatisfactory—was given?

Mr. TAYLOR. Unfortunately, there isn't. But we have found from prior experience—and I can't give you dates on any of them that are in here—that some of them go back to as far as 1981.

Mr. McCANDLESS. Well, let me go to the next part of the question, then. If a carrier continues to find himself year after year on this unsatisfactory rating sheet that you receive, is there something that triggers an investigation on your part or a consultation with Department of Transportation, because there is a consistency here in an unsatisfactory rating? Or does he fall through the cracks?

Mr. TAYLOR. Well, if we have information from our field staff—and it is unlikely that somebody is going to remain on here unsatisfactory over and over again because as Mr. Pierson pointed out that this begins to have an impact on the cost of their insurance, and that's really one of the things that thing is for.

Mr. McCANDLESS. Yes, but there are always exceptions to it.

Mr. TAYLOR. Sure, there are exceptions, and if we know of somebody who has either been on here a long time or independent of that list has had some difficulties, our staff can bring it to their attention and hope that they can then come and do something about it.

But I would like to read you, if I might, from the agreement I signed with Drew Lewis on revocations where we are on that whole thing:

> Under its authority, the Bureau of Motor Carrier Safety conducts motor carrier safety proceedings against carriers found to be in violation of the Federal motor carrier safety regulations. These proceedings may result in compliance orders binding the respondent carrier to safety performance requirements. Upon determination by BMCS that a compliance order has been violated, it may petition the ICC to revoke or suspend the carrier's operating authority.

Mr. McCANDLESS. I understand what you're saying here, but I'm—without any disrespect, I'm kind of getting bureaucracy thrown at me here, and I'm looking for the practical aspect of——

Mr. TAYLOR. Well, you're right.

Mr. McCANDLESS [continuing]. Of the operation.

If in your responsibility of this dual arrangement there is a constant appearance of an iceberg—we don't want the Titanic to go down because nobody said anything—it would appear to me that there would need to be some kind of a trigger mechanism where you consulted, met and conferred with the Department of Transportation on the relationship that you are getting here with various carriers who continue to find themselves in the red column and nothing seems to change, irrespective of whether it affects their insurance ratings or what—they are still complying with that aspect of it—as an audit procedure, as part of your responsibility and possibly to assist them in these oversights or something.

Mr. TAYLOR. You're absolutely right when you said in the beginning that it's a very awkward bureaucratic situation because you've got two agencies involved. DOT has the ratings and the information and the expertise, and we have to issue the authority.

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One of these days, if deregulation is complete and the ICC is not involved in licensing any more, this whole responsibility could easily be transferred to DOT.

In the meantime, hopefully the new procedures will work. We've sort of stumbled our way through since October 30, 1984. We do, however, maintain conversations back and forth with DOT. If you've got 1 minute I'd like to ask Mr. Gaillard to tell you how that works, because his people do it.

Mr. McCANDLESS. Before you do that, the chairlady has shown me a printout here, "Motor Carrier Census, Active Carriers," Rating: Conditional or Unsatisfactory, with docket numbers. Have you ever seen one of these?

Mr. TAYLOR. One of our staff people said that one of those was floating around. I think Mr. Gaillard has one.

Mr. McCANDLESS. It has, of course, the obvious, census number, the carrier, its address, the area in which the carrier operates, San Jose, Cincinnati, whatever. I would say some type of a number that designates probably what the State has issued this person in the way of a license; for example, San Jose, CA 95150 would probably be what, franchise tax board number?

Mr. TAYLOR. I don't know. ZIP Code.

Mr. McCANDLESS. Then there's the rating date of the thing that I'm looking at, and then the rate. If this is being printed by Department of Transportation it would appear that the Interstate Commerce Commission would like to have a copy of this so you can trace it and track it and audit it also for their purposes.

Mr. TAYLOR. Right you are, and we do.

Mr. McCANDLESS. You do?

Mr. TAYLOR. Yes. Mr. Gaillard is sitting here with one right now.

Mr. McCANDLESS. Well, we were talking here and you said, well, we don't have anything that has a rating date on it.

Mr. TAYLOR. The date.

Mr. McCANDLESS. Yes, this has a rating date on it.

Mr. TAYLOR. Ours doesn't.

Mr. McCANDLESS. Well, maybe you ought to take a look at this. The left hand and the right hand get in the pocket and work it out together.

[Witness reviewing documents.]

Mr. TAYLOR. No, the DOT did not give us a rating date either on the list that I referred to earlier or on what we thought was a copy of what you have got. Our column ends with "first docket, second docket, third docket." We don't have a rating date.

Mr. McCANDLESS. Let me ask a couple of quickies. I have spent most of my adult life in the automobile business, a part of it in heavy duty trucks. Before I went into this, in the other world I was involved in leasing heavy duty trucks. I ran a clean operation, did everything the right way. All the trucks were maintained. Nothing like preventive maintenance.

These clowns would give you some kind of a this or that or something else and they would be all over the goldarned States undercutting, doing anything they could to stay on the road. And that's why I have a concern here when I state that the bureaucracy seems to work in favor of those who want to avoid doing what's right. And so many of these things fall through the cracks uninten-

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tionally, bureaucratically or something like that, and the guy out there trying to do the job and do it properly and have correct drivers, well-trained, well-maintained trucks and so on and so forth, is at a disadvantage economically with those who really don't care.

Mr. TAYLOR. You are absolutely correct.

Mr. MCCANDLESS. Unfortunately, it's that guy who doesn't care who falls asleep somewhere and takes out five or six people with him. And that's the concern I think the chairlady and all the people on this committee have.

Mr. TAYLOR. And I'll tell you, it's a tremendous concern of ours because that's exactly what happens. You have depicted the thing very accurately, and we are trying every way we know how with the resources we have available to us to do something about it.

Mr. MCCANDLESS. Well, when you talk about the last inspection, whether it's one of my service managers who is looking for the oil change or when the guy got his driver's license the last time, is it valid, or whether he has an unsatisfactory rating, that audit trail is important to maintain the proper level of operation.

I didn't mean to interfere with your wanting Mr. Gaillard to say something, but I had to get that off my chest because we had a conflict here in statements relative to last date of inspection for whatever rating we had there, and it was shown to me and it was pretty black and white.

Mr. TAYLOR. We don't have any dates, I'm sorry, and maybe that's what created the confusion. But I would, if I might, have Mr. Gaillard just take a minute or two to talk about the kind of interface that we have tried to maintain with DOT so that we don't just sit back on our haunches and wait for them to come to us. We do work back and forth in as close cooperation as we can together between our respective staffs.

Mr. GAILLARD. Congressman, as far as the compliance side of the picture is concerned, the Commission maintains two aspects of ongoing coordination with DOT with respect to safety compliance. One is the application process. In that process, we access DOT's computer on a case-by-case basis.

On the operational side, we have what we call road check programs where we conduct ongoing—we are not conducting safety checks but we are conducting road checks for operational reasons and for——

Mr. MCCANDLESS. What would a road check include as far as your jurisdiction is concerned?

Mr. GAILLARD. It would include whether they are operating with the proper ICC license, whether they are operating within the scope of their authorities, whether they are operating on the proper leasing arrangements to determine who is responsible for the operation at the time it's being conducted——

Mr. MCCANDLESS. Does that include the licensing of the operator?

Mr. GAILLARD. It would include checking on who is the proper operator at the time the vehicle is being operated. It would determine whether the carrier is operating with proper insurance.

Mr. MCCANDLESS. If I am an operator and you are inspecting me and I have got a license that has expired, under your operation do

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you have authority to move in a manner that would prevent that fellow from continuing to operate that vehicle?

Mr. GAILLARD. We would have to go to court and get an injunction. We can pull the carrier off the road at that time. What we do, Congressman, is we conduct these operations along with the States and with DOT present. They do have the authority to pull those vehicles off the road and they can do so. We cannot.

Mr. TAYLOR. And usually the authorities we grant, Congressman, are permanent authorities, meaning that they don't have any time limits on them. They continue to be in force until they are either suspended or revoked or surrendered for cancellation.

Now we have issued a very small number of what we call limited term authorities. They are only good for 1 year or some other appropriate period of time. That device is used sometimes if you have questions about an operator and how he is going to perform. And if you are concerned about how safely he is going to conduct his operations, we do have the authority to issue a limited term certificate. We look to see how he has operated during that time before deciding whether to grant him permanent authority. But by and large, practically all the authorities we issue are permanent authorities, and they don't have time limits on them.

Mr. MCCANDLESS. I don't want to drag this out because Madam Chairwoman has been very patient with me, but as you can see, I have vented myself a little bit based upon some of my experience in the field and the bureaucracy that I had to deal with.

Mr. TAYLOR. Let me just say that I'd be happy to come back and meet with any of you personally or individually, because safety is as important to us as it is to all of you. We are very, very, very concerned about it, and I have been ever since I got there. And it's a difficult subject to cover in just a few minutes, and it's a little bit awkward with the two agencies involved in making the distinctions between safety on the one hand and insurance on the other. But we have no secrets from anyone and we'd be glad to share with you any information we have and hopefully benefit from any insights you can give us.

Mrs. COLLINS. Well, you have certainly cooperated, in fact, both of the agencies involved have, and we certain appreciate that. As I have said before, we have a vote on the floor and since our business is all finished for now, this hearing is concluded.

[Whereupon, at 11:52 a.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

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APPENDIXES

APPENDIX 1

NINETY-NINTH CONGRESS

Congress of the United States

House of Representatives

GOVERNMENT ACTIVITIES AND TRANSPORTATION
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-350-A-B
WASHINGTON, DC 20515

May 28, 1985

Mr. Ray A. Barnhart
Federal Highway Administrator
Federal Highway Administration
400 7th Street, S.W., Room 4218
Washington, D.C. 20590

Dear Mr. Barnhart:

The Subcommittee is interested in the DOT and Interstate Commerce Commission implementation of the "Certification of Safety Fitness" section of the 1984 Motor Carrier Safety Act. As you may be aware, a motor carrier's safety rating becomes a criteria for denying ICC license authority as of October 30, 1985. We therefore wish to review DOT's safety ratings program and DOT's plans for meeting its responsibilities under the Act.

Attached are a list of questions and requests for information. Mr. Michael Skrak of my staff has been in contact with your staff to ensure that the computer-generated information requested can be handled by your information and storage systems. However, if any questions arise regarding the attached request, please call Mr. Skrak at 225-7920.

Thank you for your consideration.

Sincerely,

Cardiss Collins

CARDISS COLLINS
Chairwoman

CC:MS:eg
Attachment

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QUESTIONS FOR THE FEDERAL HIGHWAY ADMINISTRATION
FROM THE SUBCOMMITTEE ON GOVERNMENT ACTIVITIES & TRANSPORTATION

June 5, 1985

1. What is DOT's current policy for intervening in ICC motor carrier route authority hearings for permanent, temporary, or emergency temporary application?

    a. What is DOT's policy for petitioning the ICC for reconsideration of a carrier's current route authority?

    b. What is the statutory justification and/or requirement for intervention?

2. What plans, thus far, does DOT have for implementing the "Certification of Safety Fitness" section of the 1984 Motor Carrier Safety Act (Sec. 215(d), PL 98-554; 49 U.S.C.A. § 2512)?

3. Will carriers have to meet the current standards to achieve a "satisfactory" rating after Sec. 215 takes effect or will the standards be changed?

    a. What process does DOT use to determine a carrier's safety fitness rating?

4. How much and what type of training is currently occurring for motor carrier Safety Inspectors?

5. Is FHWA hiring temporary employees as Safety Inspectors?

6. Please supply as detailed as possible a breakdown of general operating services provided by FHWA to the Bureau of Motor Carrier Safety, and the cost of those services.

    a. Please describe what changes in this arrangement will be made as a result of newly-instituted Associate Administrator for Motor Carrier Safety?

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7. The following items are for information derived from the FHWA/BMCS management information system:

   a. A list and number of carriers with "unsatisfactory" ratings.

   b. A list and number of carriers with conditional ratings.

   c. The number of carriers last audited:

      more than 30 years ago

      20 - 29 years ago

      10 - 19 years ago

      5 - 9 years ago

      0 - 4 years ago

   d. The list and number of carriers with "satisfactory" ratings with no record of having been audited. (Please explain)

   e. The list and number of "satisfactory" carriers which have been subject to enforcement cases within the past five years.

   f. The list and number of carriers whose safety fitness rating was changed without an audit. (Please list per year for the past five years.)

      a. Please state DOT policy and operational guidelines for changing ratings.

   g. The list and number of "unsatisfactory" or "conditional" carriers which have petitioned the ICC for operating authority or increased operating authority within the past five years.

   h. The list and number of "unsatisfactory" or "conditional" carriers which currently have ICC operating authority.

   i. The list and number of carriers which DOT has intervened against, at the ICC, within the past 10 years.

   j. The percentage and number of carriers annually rated "satisfactory," "unsatisfactory," and "conditional," as a result of audits, for the past 5 years.

***

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DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
WASHINGTON, D.C. 20590

OFFICE OF
THE ADMINISTRATOR

July 19, 1985

IN REPLY REFER TO
HMC-11

The Honorable Cardiss Collins
Chairwoman, Subcommittee on Government
Activities and Transportation
Committee on Government Operations
House of Representatives
Washington, D. C. 20515

Dear Ms. Collins:

In response to the questions elicited by your letter of May 28, the enclosed replies are provided. The information you requested is being furnished in like numbered paragraphs along with computer listings.

If you have any questions regarding the enclosed information, contact my office.

Sincerely yours,

R. A. Barnhart
Federal Highway Administrator

Enclosures

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QUESTIONS FOR THE FEDERAL HIGHWAY ADMINISTRATION
FROM THE SUBCOMITTEE ON GOVERNMENT ACTIVITIES AND TRANSPORTATION

1. What is DOT's policy for intervening in ICC motor carrier route authority hearings for permanent, temporary, or emergency temporary application?

   A decision of whether to intervene is made on a case-by-case basis using a number of factors. These factors can include violations cited in a recent audit which shows an improvement or lack of improvement over past audits, accident experience, vehicle inspection records, previous efforts to effect compliance, and the overall past history of the carrier.

   We intervene in those instances when we can show that because of violations of the FMCSR the carrier is currently conducting operations in such a manner as to present a hazard, or potential hazard, to its drivers and other users of the highways. Consideration is given to flagrant and widespread violations of the regulations which result in the use of unqualified drivers, the operation of defective vehicles, or drivers operating in violation of the hours of service regulations. The compliance history of the carrier and its accident experience are also considered, but great weight is given to current compliance and the possible consequences of violations discovered in recent audits or investigations.

   a. What is DOT's policy for petitioning the ICC for reconsideration of a carrier's current route authority?

      If authority were issued without the opportunity for us to present evidence of safety fitness, and if we felt the Interstate Commerce Commission had erred, we would request the Commission to reopen the proceeding and allow us to intervene.

      If, upon evidence of safety unfitness, we felt the Commission had seriously erred in a grant of authority, we could bring an action in Federal Court, seeking a reversal of the Commission's action. This has been done.

   b. What is the statutory justification and/or requirement for intervention?

      In accordance with 49 U.S.C. 307(b), "[w]hen the Secretary is not satisfied with the safety record of a person applying for permanent authority to provide transportation or freight forwarder service, or for approval of a proposed transfer of permanent authority, the Secretary shall intervene and present evidence of the fitness of the person to the Commission in its proceedings." In accordance with 49 U.S.C. 307(c)(3), when requested by the Commission, the Secretary shall intervene and present evidence in a proceeding in which a finding of fitness is required.

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Title 49 U.S.C. 307(c) also requires that when requested by the Commission, the Secretary shall provide the Commission with a complete report on the safety compliance of a carrier subject to its jurisdiction. The Secretary shall also make additional safety compliance audits and inspections which the Commission decides are desirable to allow it to act on the applicant or to make a finding on the fitness of the carrier.

2. What plans, thus far, does DOT have for implementing the "Certification of Safety Fitness" section of the 1984 Motor Carrier Safety Act (Sec 215(d), P.L. 98-554; 49 U.S.C.A. Sec. 2512)?

   A draft notice of proposed rulemaking (NPRM) was prepared through coordination with the Interstate Commerce Commission (ICC) and has been placed in concurrence channels. This NPRM provides a procedure for an applicant to obtain a safety rating from the Bureau of Motor Carrier Safety (BMCS). The safety rating must be attached to the application filed with the ICC for for-hire motor carrier operating authority or an application for a certificate of registration by a foreign motor carrier.

   It is our understanding that the ICC will not issue motor carrier operating authority or a certificate of registration when an applicant has received from BMCS a safety rating or provisional safety rating of unsatisfactory.

3. Will carriers have to meet the current standards to achieve a "satisfactory" rating after Sec. 215 takes effect or will the standards be changed?

   Carriers will have to meet current standards although some changes have been proposed to allow for the consideration of more recent records in assigning a safety rating. However, this will not prohibit the introduction of evidence concerning a history of noncompliance in an ICC motor carrier application proceeding.

   a. What process does DOT use to determine a carrier's safety fitness rating?

      Basically, safety fitness ratings are determined upon the basis of safety management audits. Violations discovered during BMCS roadside vehicle inspections, safety compliance posture, improvement or lack of improvement, falsification of records, failure to submit required reports, recommendations of BMCS field staff, accident experience, and violations of State safety-related regulations are also considered.

      If a reinvestigation within a short period following an audit is deemed warranted, an investigation may be conducted of areas of substantial noncompliance, and appropriate action taken on the basis of the investigation report including the assignment of a new safety rating.

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4. How much and what type of training is currently occurring for Motor Carrier Safety Inspectors?

During FY 1985, Safety Investigators as well as Officers-In-Charge and Regional Motor Carrier Safety personnel have had or will have the benefit of attending a 40-hour Motor Carrier Safety Enforcement Preparation Course, a 32-hour Motor Carrier Radiation and Monitoring Course, and a 24-hour Disposal of Hazardous Waste Course. These courses are presented at the Transportation Safety Institute, Oklahoma City, Oklahoma.

The FY 1986 training schedule is in the process of being finalized. It is projected that each Safety Investigator will receive at least 40 hours of appropriate training during FY 1986.

5. Is FHWA hiring temporary employees as Safety Inspectors?

At the present time, it is not the FHWA's policy to hire temporary employees as Safety Investigators. However, on rare occasions it is appropriate to employ a trainee on a temporary basis. Two temporary trainees are on the roster at the present time. It is anticipated that both of these individuals will be converted to permanent positions at the expiration of their temporary appointments.

6. Please supply as detailed as possible a breakdown of administrative services provided by the FHWA to the Bureau of Motor Carrier Safety, and the cost of those services.

Approximately $1.6 million of the BMCS appropriated budget is allocated to the Federal Highway Administration's (FHWA) General Operating Expenses for administrative services. This figure is based on a formula used by the FHWA's Office of Fiscal Services to cover the administrative costs of the BMCS each year.

Administrative services utilized by the BMCS include professional services of the legal, personnel, budget, fiscal, and management systems offices. Other administrative needs which come from the General Operating Expenses include rent, utilities, furniture, supplies, duplicating, and communications.

a. Please describe what changes in this arrangement will be made as a result of newly-instituted Associate Administrator for Motor Carrier Safety.

No changes are anticipated as a result of the newly-instituted Associate Administrator for Motor Carriers. The Associate Administrator will function under the purview of the FHWA and, as such, will continue to receive current services.

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7. The following items are for information derived from the FHWA/BMCS management information system as requested by your question No. 7.a. thru j.

   a. A list and number of carriers with "unsatisfactory" ratings.

      1,474 - List enclosed.

   b. Number of carriers with conditional ratings.

      5,414 - List enclosed.

   c. The number of carriers last audited:

      more than 30 years ago - 135
      20 - 29 years ago - 7,717
      10 - 19 years ago - 14,762
      5 - 9 years ago - 8,376
      0 - 4 years ago - 14,882

   d. The list and number of carriers with "satisfactory" ratings with no record of having been audited.

      9,277 - List enclosed.

   e. The list and number of "satisfactory" carriers which have been subject to enforcement cases within the past five years.

      Only data for 3 years available. 216 - List enclosed.

   f. The list and number of carriers whose safety fitness rating was changed without an audit. (Please list per year for the past five years).

      See enclosed list.

      a. Please state DOT policy and operational guidelines for changing ratings.

         It is the policy of the BMCS not to change a safety rating other than upon the results of a safety management audit, or a reinvestigation of areas of substantial noncompliance discovered during a recent audit. An exception to this policy is that a carrier may petition to have its safety rating reviewed by the Director, BMCS, as provided in 49 U.S.C. 385.9.

         The Director could change or let stand the initial rating after reviewing the data which the Chief, Operations Division, used to base his decision and the data presented by the carrier. The Director may also request additional data from the carrier or request the carrier to attend a conference to discuss the rating.

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The Director may hold a decision on a petition for review of a safety rating in abeyance until an audit or investigation can be conducted to determine the carrier's current compliance, or until additional information is obtained from the field staff to confirm data presented by the carrier.

g. The list and number of "unsatisfactory" or "conditional" carriers which have petitioned the ICC for operating authority or increased operating authority within the past five years.

Our system currently does not retain the requested information. Perhaps the ICC has this information.

h. The number of unsatisfactory or conditional carriers which currently have ICC operating authority.

2,407 - List enclosed.

i. The list and number of carriers which DOT has intervened against at the ICC within the past 10 years.

See enclosed list.

j. The percentage and number of carriers annually rated "satisfactory," "unsatisfactory," and "conditional," as a result of audits, for the past 5 years.

Information is available for only the past 4 years. Prior to that, ratings were made without audits.

	1981	1982	1983	1984
Satisfactory -	1371= 48%	2252=54%	2191=56%	2286=56%
Unsatisfactory-	387= 13%	346= 8%	356= 9%	475=12%
Conditional -	1106= 39%	1595=38%	1372=35%	1328=32%

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Safety Rating Changes without a new Audit

1983

Date changed	Carrier	From	To
3-31-83	American Trailways of Georgia	Cond	Sat
3-31-83	Ellis Transport	Unsat	Cond
3-31-83	Graves Truck Line, Inc.	Cond	Sat
4-5-83	HVH Transportation	Unsat	Cond
4-6-83	Mid-America Dairymen, Inc.	Cond	Sat
4-21-83	Ponderson Systems, Inc.	Unsat	Cond
4-21-83	J.A. Dady Trucking, Inc.	Cond	Sat
5-2-83	Concrete Trucking Service, Inc.	Cond	Sat
5-4-83	Leonard Feed & Grain, Inc.	Unsat	Cond
5-5-83	Penner Feed & Supply, Inc.	Unsat	Cond
5-12-83	Flynn Century Concrete Co.	Cond	Sat
6-13-83	Mahaffey's Warehouse, Inc.	Cond	Sat
6-13-83	Kingman Auto Salvage, Inc.	Cond	Sat
6-16-83	Tombigbee Transport, Inc.	Cond	Sat
6-21-83	Hofer, Inc.	Unsat	Cond
6-28-83	St. Johnsbury Trucking Company, Inc.	Unsat	Cond
7-28-83	Haskins Trucking, Inc.	Cond	Sat
8-23-83	G. C. Hemphill Trucking, Inc.	Cond	Sat
8-29-83	Transport West, Inc.	Cond	Sat
9-28-83	Getter Trucking, Inc.	Unsat	Cond
10-12-83	B & G Supply Co., Inc.	Cond	Sat
10-12-83	Williams Oil Co.	Unsat	Cond
10-13-83	Toler Oil Co., Inc.	Cond	Sat
10-13-83	Bostick Brothers, Inc.	Cond	Sat
10-13-83	Central Grain Haulers, Inc.	Cond	Sat
10-13-83	Edward McGill, Inc.	Cond	Sat
10-13-83	Chem Central	Cond	Sat
10-13-83	A. Arnold & Son Transfer & Storage	Cond	Sat
10-13-83	Vardaros Motor Lines, Inc.	Cond	Sat
10-13-83	Carolina Processed Glass, Inc.	Cond	Sat
10-13-83	Henry Edwards Trucking Co.	Cond	Sat
10-13-83	Southern Paper Stock Co.	Cond	Sat
10-13-83	Gene Myatt	Cond	Sat
10-13-83	James C. Williams Trucking	Cond	Sat
10-13-83	Scott Housing Systems, Inc.	Cond	Sat
10-13-83	Rownd & Son, Inc.	Cond	Sat
10-13-83	Georgetown Steel Corporation	Cond	Sat
10-13-83	Edd Oil Co., Inc.	Cond	Sat
10-13-83	Mike Rose Oil, Inc.	Cond	Sat
10-13-83	Neill Butane, Inc.	Cond	Sat
10-13-83	Lewis Transport, Inc.	Cond	Sat
10-13-83	Guardian Industrial Services, Inc.	Cond	Sat
10-13-83	Conalco Contract Carrier, Inc.	Cond	Sat
10-13-83	Carter Trucking Co., Inc.	Cond	Sat
10-13-83	Dantrac, Inc.	Cond	Sat
10-13-83	Glover Growers, Inc.	Cond	Sat
10-13-83	Propst Lumber Company	Cond	Sat
10-13-83	All State Pipe Supply Co., Inc.	Cond	Sat
10-13-83	High Rise Service Company, Inc.	Cond	Sat

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Safety Rating Changes without a new Audit

1983

Date changed	Carrier	From	To
10-13-83	Manning Motor Express, Inc.	Cond	Sat
10-13-83	Ball Brothers Oil Co., Inc.	Cond	Sat
10-13-83	Statewide Waste Oil & Chemical	Cond	Sat
10-13-83	R Way, Inc.	Cond	Sat
10-13-83	Nationwide Horse Carriers, Inc.	Cond	Sat
10-13-83	Westco Trucking, Inc.	Cond	Sat
10-13-83	South Kentucky Purchasing Co.	Cond	Sat
10-13-83	Winn-Dixie Louisville, Inc.	Cond	Sat
10-13-83	A & S Trucking	Cond	Sat
11-29-83	Grace Distribution Services, Inc.	Unsat	Cond
12-8-83	Gold Star Wholesale Nursery, Inc.	Unsat	Cond
12-29-83	Siskin Steel & Supply Company, Inc.	Cond	Sat

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Safety Rating Changes without a new Audit

1984

Date changed	Carrier	From	To
1-3-84	Clairson International	Cond	Sat
1-6-84	T. Wolf Company	Unsat	Cond
1-17-84	Action Petroleum Co.	Cond	Sat
2-8-84	Shea Transport Service	Cond	Sat
2-9-84	Northwest Transport Service	Cond	Sat
2-21-84	Willis Shaw Frozen Express, Inc.	Cond	Sat
3-13-84	Chessie Motor Express	Cond	Sat
3-2-84	Midwest Truck Line	Unsat	Sat
3-13-84	Frozen Food Distributors, Inc.	Cond	Sat
3-13-84	Consolidated Pipe&Supply Co.,Inc. of MS	Cond	Sat
3-19-84	Garber's Trucking	Unsat	Cond
3-26-84	Alton Oil Co, Inc.	Unsat	Cond
3-28-84	Brunson, Inc.	Cond	Sat
3-29-84	Cresline Plastic Pipe Co., Inc.	Cond	Sat
3-29-84	Inland Water Pollution Control, Inc.	Cond	Sat
3-29-84	Wheaton Van Lines, Inc.	Cond	Sat
3-30-84	Burnham Van Service	Cond	Sat
4-9-84	Midwest Specialized Transportation	Cond	Sat
4-10-84	Griffin Pie Co.	Cond	Sat
6-1-84	McKoin Trucking Co., Inc.	Cond	Sat
6-12-84	Leonard Brothers Trucking	Cond	Sat
6-18-84	Palmer Foods, Inc.	Cond	Sat
6-18-84	City Delivery	Cond	Sat
6-21-84	Action Petroleum Co., Inc.	Cond	Sat
7-2-84	Bandag, Inc.	Unsat	Cond
7-3-84	Grace Distribution Services, Inc.	Cond	Sat
7-20-84	Jones Truck Lines, Inc.	Cond	Sat
7-20-84	Behnke, Inc.	Cond	Sat
7-26-84	R. W. Bask	Cond	Sat
8-10-84	C & C Transport, Inc.	Cond	Sat
9-20-84	Howard Baer, Inc.	Unsat	Sat
10-3-84	Dormon Transport, Inc.	Cond	Sat
10-17-84	Shoe Corporation of America	Cond	Sat
11-9-84	Litehouse, Inc.	Unsat	Cond

The only records available disclosing changes to safety ratings were for the years 1983 and 1984.

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Question 7.i.

Cases during which DOT has intervened or has, at the request of the ICC, presented information during application proceedings within the past ten years include at least the following:

1. National Freight

2. Transamerican Freight Lines, Ext., 131 MCC 640 (1979)

3. Central & Southern Truck Lines, MC 113267 (Sub No. 355)--approximately 1978

4. Ringsby

5. Allan B. Robbins d/b/a Robbins Trailer Service, MC 136307 (Sub No. 11), rev'd on appeal Department of Transportation, Federal Highway Administration v. Interstate Commerce Commission and the United States of America, 733 F. 2d 10 (D.C. Cir. 1984)

6. Burkewitz Transport, Inc. Mc 136307, (Sub No. 11)--1984

7. Lura T. Brian d/b/a Ledbetter Trucking & Salvage Co., Inc. MC-169869 -- 1984

8. John R. Lawson Rock & Oil Inc. MC-176388--1985

9. Noerr Motor Freight Inc. MC-111611 (Sub No. 60)

10. Controlled Carriers Inc. MC-150080 (Sub No. 12)

11. Roy A. Leiphart Trucking Inc. MC 110328 (Sub No. 24)--1984

12. Bulk Transit Corporation MC-139395 (Sub No. 11)--1984

13. Ace Transportation Inc. MC-164740 (Sub No. 2)

14. American-Italian Tours Inc.--MC 164048 (Sub No. 4)

15. Monin Trucking Inc. MC 145849 (Sub No. 7)

16. Transport Robert (1973) Ltd. MC 143385

17. Yarmouth Lumber Inc. MC 150526

18. Swift Transportation Company, Inc. MC 132818 (Sub Nos. 138, 139, 140 & 141)--1982

19. Five Star Transportation Inc. MC 157924 (Sub No. 4)

20. K & K Transportation Corporation MC-139835 (Sub No. 5)

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21. Landis Leasing Inc. dba Indian Valley Enterprises MC 116725 (Sub No. 35)--1985

22. M.D.R. Cartage Inc. MC 151118 (Sub No. 28) (additional information presented)

23. Robinson Charter Lines, Inc. MC 156247 --1981

24. Wenham Transportation, Inc. MC 77424 (Sub No. 46F)-- apoproximately 1980

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APPENDIX 2

CARDISS COLLINS, ILLINOIS, CHAIRWOMAN
MAJOR OWENS, NEW YORK
TOM LANTOS, CALIFORNIA
GERALD D. KLECZKA, WISCONSIN
MATTHEW G. MARTINEZ, CALIFORNIA

ALFRED A. (AL) MCCANDLESS, CALIFORNIA
PATRICK L. SWINDALL, GEORGIA
THOMAS D. (TOM) DELAY, TEXAS

(202) 226-7820

NINETY-NINTH CONGRESS

Congress of the United States

House of Representatives

GOVERNMENT ACTIVITIES AND TRANSPORTATION
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-350-A-B
WASHINGTON, DC 20515

July 24, 1985

Mr. Ray A. Barnhart
Federal Highway Administrator
Federal Highway Administration
400 7th Street, S.W., Room 4218
Washington, D.C. 20590

Dear Mr. Barnhart:

This letter is to thank you for your response to our June 5, 1985 interrogatory and to transcript follow-up questions. As the cover letter to the first questionnaire stated, we are interested in the implementation of the "Certification of Safety Fitness" section of the 1984 Motor Carrier Safety Act.

If any of the requested information is unavailable, please call Michael Skrak of my staff at 225-7920. Your assistance is appreciated.

Sincerely,

Cardiss Collins

CARDISS COLLINS
Chairwoman

CC:MS:eg

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1. Please supply a copy of all enforcement and audit reports for Noerr Motor Freight, Inc. (205 Washington Avenue, Lewistown, Pennsylvania), subsequent to April 16, 1985. In addition, please supply any DOT memorandum subsequent to this date regarding this carrier.

2. Please supply a complete copy of all audits and enforcement memorandum for Spencer Trucking Corporation (Keyser, West Virginia, ICC No. MC-129086). This will include a September, 1982, audit; an October 21, 1982 safety rating; a September, 1983, civil forfeiture; a March 19, 1985 audit; and an April 25, 1985 redesignation of safety fitness rating. Please include a communication to and from BMCS field offices.

3. Please supply all audits for M.D.R. Cantage, Inc. (Jonesboro, Arkansas, Inc., ICC No. MC 151118).

4. Please supply latest audits for:

   a. Southern Intermodal (Savannah, Georgia, BMCS Census Number 29613)

   b. Scott Truck Line, Inc. (Denver, Colorado, No. 29871)

   c. Millis Transfer, Inc. (Black River Falls, Wisconsin, No. 46749)

   d. H.O. Wolding, Inc., (Nelsonville, Wisconsin, No. 46811)

   e. W. J. Digby, Inc., (Commerce City, Colorado, No. 2248)

   f. Paul's Trucking, Inc. (Woodbridge, N.J.)

5. In the Memorandum of Understanding, between DOT and ICC (dated August 23, 1982), section II d(2) (Revocation), BMCS is given the authority to petition for revocation. The basis for their revocation is the violation, by a carrier, of a compliance order.

   a. Does the Bureau track compliance orders?

   b. Does the Bureau monitor carrier cooperation with compliance orders?

   c. Has the Bureau notified the ICC of a compliance order violation, under the provision of MOI Id(2)? If so, how often?

6. During the July 19, 1985, hearing on truck safety in Denver, Colorado, the subject of routing was discussed. We have reviewed the routing violations (49 CFR 397.9) your office transmitted to us.

Has the interpretation, including the validity, of section 797.9 ever been tested in court? In addition, please provide any interpretations of DOT's
General Counsel, the Attorney General, and the Comptroller General of this section.

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DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
WASHINGTON, D.C. 20590

OFFICE OF THE ADMINISTRATOR

September 9, 1985

IN REPLY REFER TO

HMC-11

The Honorable Cardiss Collins
Chairwoman, Subcommittee on Government
Activities and Transportation
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Ms. Collins:

This is in response to your letter of July 24 requesting information on several motor carriers and information on compliance orders.

The requested information is enclosed, however, I would point out that enforcement action is presently in litigation against Paul's Trucking, Inc., and the field staff is preparing an enforcement report on Moerr Motor Freight. Public release of information or documentation on these two carriers could jeopardize the Government's case.

You asked questions concerning compliance order procedures. The questions and our responses are as follows:

5. In the Memorandum of Understanding, between DOT and ICC (dated August 23, 1982), section II d(2) (Revocation), BMCS is given the authority to petition for revocation. The basis for their revocation is the violation, by a carrier, of a compliance order.

   a. Does the Bureau track compliance orders?

      Yes, in July 1983, the Bureau established a computer procedure for monitoring the enforcement activities of the field staff. In addition, Volume 4, Chapter 6 of the Motor Carrier Safety Training Text sets forth the procedures for the processing and monitoring of compliance orders.

   b. Does the Bureau monitor carrier cooperation with compliance orders?

      Yes, guidelines for the processing of compliance orders are set forth in Volume 4, Chapter 6 of the Motor Carrier Safety Training Text. However, these procedures for monitoring motor carriers' cooperation with orders has varied from Region to Region. In January 1985, a FHWA Task Force reviewed the organizational structure of the Motor Carrier Safety Program and recommended the reorganization of the Bureau to promote a uniform Motor Carrier Safety Program. In March 1985, the Bureau was reorganized within FHWA with the Bureau's Headquarters receiving direct line authority

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over the field staff. One of the objectives of this reorganization was to promote a national uniform motor carrier safety program to be adhered to by all Regions. The Bureau has taken positive steps toward improving the monitoring of compliance orders.

c. Has the Bureau notified the ICC of a compliance order violation, under the provisions of MOI Id(2)? If so, how often?

No, there would be no purpose in notifying the ICC of a carrier's noncompliance under that provision of the Memorandum of Understanding. If, in the Bureau's opinion, a carrier were determined to be unfit because of its safety record, it would request the ICC to initiate a proceeding allowing the Bureau to present evidence showing that the carrier's operating authority should be revoked or suspended. On at least two occasions during approximately the past 5 years, the Bureau has requested a revocation or suspension proceeding where evidence, in part, included failing to comply with the provisions of an order.

6. During the July 19, 1985, hearing on truck safety in Denver, Colorado, the subject of routing was discussed. We have reviewed the routing violations (49 CFR 397.9) your office transmitted to us.

Has the interpretation, including the validity, of section 397.9 ever been tested in court? In addition, please provide any interpretations of DOT's General Counsel, the Attorney General, and the Comptroller General of this section.

The FHWA's interpretation of 397.9 has not been tested in court. The four enforcement cases referred to in our July 19 letter have been or are being handled administratively by FHWA attorneys.

To the best of our knowledge, this section has not been interpreted by DOT's General Counsel, the Attorney General, or the Comptroller General.

If you have any questions regarding the enclosed information, contact my office.

Sincerely yours,

for R. A. Barnhart
Federal Highway Administrator

Enclosures

Federal Highway Administration
HM C-11:DGregory:ybb:61724:8/19/85
Retyped:ybb:61724:9/6/85
Control No. FH-41822 (DA 6/8/85 ID 235 BH)
Copies to:
HOA-1, HOA-2, HOA-3, HOA-3(ES), I
Reader Files 3401/3408 D7 - Congressional Correspondence 3408

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APPENDIX 3

NINETY-NINTH CONGRESS

Congress of the United States

House of Representatives

GOVERNMENT ACTIVITIES AND TRANSPORTATION
SUBCOMMITTEE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
RAYBURN HOUSE OFFICE BUILDING, ROOM B-350-A-B
WASHINGTON, DC 20515

June 3, 1985

Mr. Reese H. Taylor, Jr.
Chairman
Interstate Commerce Commission
12th & Constitution Avenue N.W.
Room 3111
Washington, D.C. 20423

Dear Mr. Taylor:

The Subcommittee is interested in the Department of Transportation and Interstate Commerce Commission implementation of the "Certification of Safety Fitness" section of the 1984 Motor Carrier Safety Act. As you are aware, a motor carrier safety rating becomes a criteria for denying ICC license authority as of October 30, 1985. We, therefore, wish to review ICC's current system for considering safety fitness and ICC's plans after October.

Attached are a list of questions and requests for information. Mr. Michael Skrak of my staff has been in contact with your agency regarding this inquiry.

Sincerely,

CARDISS COLLINS
Chairwoman

CC:MTS:cm
Attachment

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Questions for the Interstate Commerce Commission
from the Government Activities and Transportation
Subcommittee
June 5, 1985

1. The subcommittee staff has discussed with ICC's Office of Compliance and Consumer Assistance, the Commission's system for reviewing carrier safety ratings in its license application process. Our understanding is that since passage of the Motor Carrier Safety Act of 1984 (P.L. 98-554), the ICC's Office of Compliance and Consumer Assistance has monitored applicant safety ratings. The following questions are based on OCCA's activity:

   a) How many and what percentage of all applicants' ratings were reviewed by OCCA since the MSCA of 1984 was passed in October, 1984?

   b) Of those reviewed, what percentage was found to have either conditional or unsatisfactory Department of Transportation-designated fitness ratings?

   c) Of those unsatisfactory applicants, in how many cases did OCCA notify the Commission?

   d) Of those applications where the Commission was informed that the carrier was unsatisfactory, how many Commission disapprovals resulted?

2. How many and what percentage of all ICC licensees have either a conditional or unsatisfactory ratings?

3. On what grounds could the ICC review the authorities of all conditional-rated or unsatisfactory-rated licensees?

4. What steps has the ICC taken thus far to meet the October, 1985 compliance deadline for the "Certification of Safety Fitness" provision, 49 U.S.C. See 2512?

5. Will an appeal function within the ICC be provided for applicants denied operating authority as a result of adverses fitness ratings?

6. Does the ICC notify DOT of new carriers?

7. Please list the number, by year, of carriers whose operating authority was suspended or revoked because of a poor safety record or rating.

8. The following questions are based upon a sample of recent ICC decisions.

   a) In ICC decision No. MC-145715 (Sub-No. 23), Re: Bell Trucking, decided April 23, 1985, OCCA documented the carrier's unsatisfactory DOT rating. In June, 1984, the carrier had been inspected by BMCS and had been cited for the following: falsified driver's logs, unreported accidents, failure to prepare daily vehicle inspections, violations of maximum driving time regulations, etc. Yet, the Commission found "applicant is fit, willing, and able properly [sic] to perform the granted service and to conform to statutory and administrative requirements."

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The ICC decision does not indicate how the Commission documented its contravention of DOT's inspection record. The carrier application was granted conditionally.

How was the Commission able to find the carrier fit and able to conform to statutory requirements?

b) In ICC decision No. MC-141917 (Sub-No. 5), re: Leo J. Unerley, Inc. decided April 4, 1985, OCCA documents the carrier's unsatisfactory DOT rating. The Commission found the carrier "...fit, willing...to conform to statutory and administrative requirements." The Commission went on to grant authority based on the carrier meeting certain conditions: "Before issuance of this authority, Leo J Unerley, Inc., should file an affidavit offering either evidence of satisfactory safety rating from the Department of Transportation, Bureau of Motor Carrier Safety, or compelling reasons why authority should be issued regardless of Unerley's safety rating."

Why did the Commission state the carrier was fit in the face of an adverse DOT safety rating?

What is the Commissioner's policy toward accepting undocumented affidavits, filed by a carrier, attesting to the carrier's fitness?

c) In ICC decision No. MC-139335 (Sub-No. 5), re: K & K Transportation Corp. decided February 21, 1985, the Commission granted an application for contract carrier authority. The Commission appears to have made its judgement, despite K & K's unsatisfactory DOT safety rating, based on a K & K affidavit.

In addition to awarding authority to an unsatisfactory-rated carrier, the Commission appears to have discounted what the Commission characterized as the carrier's "misrepresentation" of its DOT fitness rating. The carrier is said to have known of its rating before making the application.

What policy does the Commission follow when carrier applications misstate the carrier's fitness rating?

Will the Commission's policy of overruling DOT fitness ratings change as a result of Sec. 215 of the 1984 Motor Carrier Safety Act?

***

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Interstate Commerce Commission
Washington, D. C. 20423

Office of the Chairman

July 10, 1985

Honorable Cardiss Collins
Chairwoman
Government Activities and
Transportation Subcommittee
Committee on Government Operations
Room B-350-A-B
Rayburn House Office Building
Washington, DC 20515

Dear Chairwoman Collins:

Thank you for your letter of June 3, 1985, concerning the implementation of the "Certification of Safety Fitness" section of the Motor Carrier Safety Act of 1984 by the Department of Transportation and the Interstate Commerce Commission. Specifically, your inquiry focuses on the Commission's current system for considering motor carrier safety fitness issues and our plans for implementing the new safety fitness provisions by October 30, 1985.

Enclosed please find the answers to the questions and, to the extent it was available, the information you requested.

Hopefully, the information we have provided is fully responsive to your June 3rd request, but if we can be of any further assistance, please don't hesitate to let me know.

Sincerely yours,

Reese H. Taylor, Jr.
Chairman

Enclosures

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The subcommittee staff has discussed with ICC's Office of Compliance and Consumer Assistance, the Commission's system for reviewing carrier safety ratings in its license application process. Our understanding is that since passage of the Motor Carrier Safety Act of 1984 (P.L. 98-554), the ICC's Office of Compliance and Consumer Assistance has monitored applicant safety ratings. The following questions are based on OCCA's activity:

(a) How many and what percentage of all applicants' ratings were reviewed by OCCA since the MSCA of 1984 was passed in October, 1984?

From October 30, 1984, through May 31, 1985, there were 6,857 applications filed with the Commission seeking permanent motor carrier authority for both property and passenger carriers. Five hundred fifty-five were for passenger operations. OCCA field staff reviewed every application in which a notice copy was filed with the appropriate regional office, as required by our regulations. We know of five instances in which the applicant failed to file the required notice copy. We do not, however, know if there were other applicants which should have filed with the regional office, but failed to do so. Nevertheless, OCCA is now using an additional independent screening process to identify all filings, even if the applicant fails to make the required notice filing with the regional office. Therefore, under our current procedures, the staff is reviewing the safety ratings of all applicants for a motor carrier license.

(b) Of those reviewed, what percentage was found to have either conditional or unsatisfactory Department of Transportation-designated fitness ratings?

Of the applications reviewed through May 31, 1985, twenty-eight were filed by carriers that had an unsatisfactory safety rating from DOT-BMCS. The Commission has not maintained records on applicants with conditional safety ratings.

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(c) Of those unsatisfactory applicants, in how many cases did OCCA notify the Commission?

With respect to the 28 cases involving applicants with an unsatisfactory safety rating, OCCA notified the Commission directly on nine occasions, either by filing a request that it be directed to participate in the proceeding or by way of a staff advisory memorandum. In all of the other instances, DOT-BMCS was contacted and asked to consider formal intervention, inasmuch as OCCA had no independent evidence to pursue the matter unilaterally. In seven of those cases, DOT did intervene, but declined in the 12 other cases.

(d) Of those applications where the Commission was informed that the carrier was unsatisfactory, how many Commission disapprovals resulted?

In the 16 cases where the appropriate Commission decision-making body was advised of the applicant's unsatisfactory safety rating, the following actions were taken: three applications were granted with no conditions; eight were granted with the condition that the applicant show evidence of a satisfactory safety rating or other compelling evidence as to why the license should be issued; one was granted for a limited term; two are pending; and two were dismissed at applicant's request. None were denied.

2. How many and what percentage of all ICC licensees have either a conditional or unsatisfactory rating?

The ICC does not maintain records which would enable us to respond to this request. All carrier safety records are maintained by DOT-BMCS and it may be possible for that agency to provide this information.

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3. On what grounds could the ICC review the authorities of all conditional-rated or unsatisfactory-rated licensees?

The Commission has authority under the investigation and revocation provisions of 49 U.S.C. 11701 and 10925 to review and, whenever appropriate, revoke or suspend the operating authorities of motor carriers it has licensed. Section 11701(a) authorizes the Commission to commence an investigation on its own initiative or on complaint regarding any matter within its jurisdiction. Similarly, Section 49 U.S.C. 10925 authorizes the Commission, after notice and hearing, to revoke or suspend a current certificate of a motor carrier "for willful failure to comply with this subtitle, a regulation or order of the Commission, or a condition of its certificate, permit, or license . . . ." A prerequisite to a carrier receiving authority is that it be fit, willing, and able to perform operations in a safe manner. See Ex Parte 55 (Sub-No. 43A), Acceptable Forms of Requests for Operating Authority (not printed), served August 8, 1983; and 49 U.S.C. 10922(b)(1)(A), (c)(1)(A), 10923(a)(1). Therefore, if a carrier is not operating in a safe manner, its authority is subject to revocation for failure to comply with these provisions of the statute.

Section 10925(c)(1) further provides, however, that the Commission may only revoke a certificate or license after it has issued an order to the carrier under Section 11701

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requiring compliance with the statute, regulation or condition involved, and the carrier willfully does not comply. Under Section 10925(c)(3), the carrier must be given at least 30 days in which to comply with that order. Failure to comply after notice constitutes willful violation of a Commission order that would support revocation under Section 10925(c)(1). See Aero Mayflower Transit Co., Inc. v. ICC, 535 F.2d 997 (7th Cir. 1976).

Accordingly, the Commission has the requisite statutory authority to review the licenses of motor carriers that are not operating in a safe manner. However, because DOT has jurisdiction over motor carrier safety matters, the Commission must rely on that Department to introduce evidence pertaining to a carrier's safety fitness.

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4. What steps has the ICC taken thus far to meet the October, 1985 compliance deadline for the "Certification of Safety Fitness" provision?

Immediately after the Motor Carrier Safety Act of 1984 was signed into law on October 30, 1984, I initiated a meeting with Federal Highway Administrator Barnhart at DOT to discuss our respective responsibilities under Section 215 of the Act. At our initial meeting, we agreed to establish a joint agency working group to coordinate the implementation of the new law. The members of this working group have met on several occasions to jointly develop appropriate procedures to implement the requirements of Section 215.

Since the Commission's rules must necessarily conform to those ultimately adopted by DOT, it is not possible for the Commission to initiate a rulemaking proceeding until DOT has at least issued its notice of proposed rulemaking. However, preliminary work has been done by our staff and we are prepared to initiate our rulemaking proceeding shortly after DOT issues its notice.

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5. Will an appeal function within the ICC be provided for applicants denied operating authority as a result of adverse fitness ratings?

In view of DOT's specialized safety expertise and its exclusive authority to assign ratings to motor carriers, an appeal from an unsatisfactory safety rating will have to be made to DOT. However, any applicant that is denied operating authority by this Commission has an opportunity to appeal that decision pursuant to the Commission's rules of Appellate Procedure at 49 C.F.R. 1115.

In other words, a carrier that is dissatisfied with its safety rating by DOT will have to appeal to DOT, whereas a carrier that is dissatisfied with the denial of its application by the Commission, will have to appeal to the Commission.

6. Does the ICC notify DOT of new carriers?

The ICC provides formal notification to the public, including DOT, of all applications for operating authority by publishing a summary of the applications in the daily ICC Register. DOT-BMCS is on the service list for the publication and receives a daily copy which it uses to update its data base of existing motor carriers.

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7. Please list the number, by year, of carriers whose operating authority was suspended or revoked because of poor safety record or rating.

The Commission's current data system does not record revocations of permanent operating authority that were based on a poor safety record or rating. However, a few examples of such Commission proceedings are as follows:

In 1971, upon complaint by the DOT, Federal Highway Administration (FHWA), the Commission suspended the operating authority of Safeway Trails to provide charter and special operations for a period of 30 days. The basic authority to provide regular route passenger service was not suspended. See, Federal Highway Admin. v. Safeway Trails, Inc., 113 M.C.C. 815.

In 1984, pursuant to a settlement agreement between FHWA and W.J. Digby, Inc., Digby's operating authority, in No. MC-115826 and Sub-numbers thereunder, was suspended for a period of six months, commencing July 1, 1984, and ending January 1, 1985.

On December 3, 1984, DOT filed a complaint, docketed as No. MC-C-10948, Federal Highway Administration v. Controlled Carriers, seeking revocation of the operating authority of Controlled Carriers, Inc., based on that carrier's safety violations. This complaint was prompted by a fitness proceeding in which OCCA questioned the carrier's fitness to receive authority in application proceeding No. MC-150080 (Sub-No. 11). DOT-FHWA also intervened in the application proceeding. The complaint is pending before the Commission.

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On May 16, 1985, DOT-FHWA filed a complaint docketed as No. MC-C-10969, Federal Highway Administration v. M. Bulifant Trucking, Inc., seeking revocation or suspension of the operating authority of Bulifant. This complaint is the direct result of a request by the ICC that DOT investigate the safety compliance of this carrier, based on an unsatisfactory safety record which came to the attention of the Commission in connection with an application by Bulifant for temporary authority. The complaint is pending before the Commission.

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8. The following questions are based upon a sample of recent ICC decisions.

(a) In ICC decision No. MC-145715 (Sub-No. 23), Re: Bell Trucking, decided April 23, 1985, OCCA documented the carrier's unsatisfactory DOT rating. In June, 1984, the carrier had been inspected by BMCS and had been cited for the following: falsified driver's logs, unreported accidents, failure to prepare daily vehicle inspections, violations of maximum driving time regulations, etc. Yet, the Commission found "applicant is fit, willing, and able properly [sic] to perform the granted service and to conform to statutory and administrative requirements."

The ICC decision does not indicate how the Commission documented its contravention of DOT's inspection record. The carrier application was granted conditionally.

How was the Commission able to find the carrier fit and able to conform to statutory requirements?

(b) In ICC decision No. MC-141917 (Sub-No. 5), re: Leo J. Umerley, Inc. decided April 4, 1985, OCCA documents the carrier's unsatisfactory DOT rating. The Commission found the carrier "...fit, willing...to conform to statutory and administrative requirements. The Commission went on to grant authority based on the carrier meeting certain conditions: "Before issuance of this authority, Leo J. Umerley, Inc., should file an affidavit offering either evidence of satisfactory safety rating from the Department of Transportation, Bureau of Motor Carrier Safety, or compelling reasons why authority should be issued regardless of Umerley's safety rating."

Why did the Commission state the carrier was fit in the face of an adverse DOT safety rating?

What is the Commissioner's policy toward accepting undocumented affidavits, filed by a carrier, attesting to the carrier's fitness?

(c) In ICC decision No. MC-139335 (Sub-No. 5), re: K&K Transportation Corp. decided February 21, 1985, the Commission granted an application for contract carrier authority. The Commission appears to have made its judgement, despite K&K's unsatisfactory DOT safety rating, based on a K&K affidavit.

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In addition to awarding authority to an unsatisfactory-rated carrier, the Commission appears to have discounted what the Commission characterized as the carrier's "misrepresentation" of its DOT fitness rating. The carrier is said to have known of its rating before making the application.

What policy does the Commission follow when carrier applications misstate the carrier's fitness rating?

Will the Commission's policy of overruling DOT fitness ratings change as a result of Sec. 215 of the 1984 Motor Carrier Safety Act?

Since I was not a member of the decision-making body* that rendered the three specific decisions cited above, I cannot comment directly on the merits of those three cases. Also, there is a difference of opinion among the individual Commissioners as to the proper disposition of applications filed by carriers with alleged safety violations. In these circumstances, I have attached copies of the notation votes and clearance for each of the above cited decisions, which set forth the position of the individual Commissioners that participated in those proceedings. Also attached is a copy of the Commission's decision in No. MC-111611 (Sub-No. 60), Noerr Motor Freight, Inc. (not printed), decided February 12, 1985, which sets forth in more detail the various views of individual Commissioners on the issue of safety fitness.

*To facilitate the disposition of our workload, the Commission established two divisions with three Commissioners assigned to each division. Motor carrier operating authority cases involving issues of safety fitness are generally assigned to the appropriate division, unless certified to the entire Commission.

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More specifically, my separate expression in the attached Noerr decision addresses the matters raised in Question 8(a) and (b). As to Question 8(c), in my opinion, the misrepresentation of a material fact bears directly on the issue of a carrier's fitness. However, generally such issues can only be resolved through an oral hearing where the witnesses can be subjected to cross-examination.

Finally, once the regulations implementing Section 215 have been promulgated, the Commission will be absolutely prohibited from granting a license to a carrier that does not meet DOT's safety fitness requirements.

Attachments

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APPENDIX 4

Interstate Commerce Commission
Washington, D.C. 20423

OFFICE OF PROCEEDINGS

July 26, 1985

Mr. Michael Skrak
Government Activities and
Transportation Committee
B350 Rayburn Building
Washington, DC 20515

Dear Mr. Skrak:

Enclosed please find the information which I think may answer your inquiry. If you find you need more information or clarification, please do not hesitate in contacting me.

Sincerely,

Noreta R. McGee
Assistant to the Director

Enc.

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MOTOR CARRIERS

STATISTICAL PERIOD ---------- 10/1/84-3/31/85

APPLICATION TYPE	DISPOSITION TYPE	NEW CARRIERS Prop.	NEW CARRIERS Pass.	EXISTING CARRIERS Prop.	EXISTING CARRIERS Pass.	TOTAL Prop.	TOTAL Pass.
COMMON	full/partial grant	1621	368	982	105	2603	473
	denial	1	0	1	0	2	0
	dismissed/withdrawn	32	9	10	6	42	15
	total	1654	377	993	111	2647	488
CONTRACT	full/partial grant	1841	8	1030	3	2871	11
	denial	0	0	0	0	0	0
	dismissed/withdrawn	22	2	15	0	37	2
	total	1863	10	1045	3	2908	13
BROKERS	full/partial grant	887		11		898	
	denial	0		0		0	
	dismissed/withdrawn	3		1		4	
	total	890		12		02	
*OWNER OPERATORS	full/partial grant	175		7		182	
	denial	1		0		1	
	dismissed/withdrawn	5		0		5	
	total	181		7		188	
*NATIONWIDE GEN. COMM.	full/partial grant	569		514		1083	
	denial	0		0		0	
	dismissed/withdrawn	1		2		3	
	total	570		516		1086	

*figures are included in the common property figures.

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MOTOR CARRIERS

STATISTICAL PERIOD ------ 10/1/83-9/30/84

APPLICATION TYPE	DISPOSITION TYPE	NEW CARRIERS		EXISTING CARRIERS		TOTAL	
		Prop.	Pass.	Prop.	Pass.	Prop.	Pass.
COMMON	full/partial grant	3335	772	2798	282	6133	1054
	denial	2	2	1	0	3	2
	dismissed/withdrawn	314	44	44	5	358	49
	total	3651	818	2843	287	6494	1105
CONTRACT	full/partial grant	2101	10	3021	4	5122	14
	denial	1	0	2	0	3	0
	dismissed/withdrawn	101	2	42	0	143	2
	total	2203	12	3065	4	5268	16
BROKERS	full/partial grant	1337		27		1364	
	denial	0		0		0	
	dismissed/withdrawn	94		2		96	
	total	1431		29		1460	
*OWNER OPERATORS	full/partial grant	456		14		470	
	denial	0		0		0	
	dismissed/withdrawn	93		2		95	
	total	549		16		565	
*NATIONWIDE GEN. COMM.	full/partial grant	718		1004		1722	
	denial	0		0		0	
	dismissed/withdrawn	6		25		31	
	total	724		1029		1753	

*Figures are included in the common property figures.

84

PERMANENT MOTOR CARRIER OPERATING RIGHTS APPLICATIONS
FISCAL 1984 DISPOSITIONS PROFILE
(INITIAL DECISIONS)

OPENINGS	TYPE APPLICATION	CLOSINGS							
		full grant	partial grant	conditional grant	denial	withdrawn	rejected/ dismissed	unspecified	TOTAL
3337	initial common prop.	3257	40	31	3	8	305	1	3645
775	initial common pass.	761	1	7	2	4	39	0	814
2636	initial contract prop.	2070	1	28	1	6	100	0	2206
15	initial contract pass.	10	0	0	0	0	1	0	11
1461	initial broker	1333	0	1	0	1	94	1	1430
2472	extension common prop.	2743	40	15	1	0	46	1	2846
258	extension common pass.	279	0	4	0	2	3	0	288
2792	extention contract prop.	2996	3	27	2	3	38	0	3069
2	extension contract pass.	4	0	0	0	0	0	0	4
26	extension broker	27	0	0	0	0	2	0	20
61	modification	57	0	0	0	0	0	5	62
13835	TOTAL	13537	85	113	9	24	628	8	14404

SUMMARY--ON THE MERITS:	GRANTED	DENIED
New carriers	7540	6
Existing carriers	6138	8

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PERMANENT MOTOR CARRIER OPERATING RIGHTS APPLICATIONS
FISCAL 1985 INITIAL DECISION DISPOSITIONS PROFILE
(1st 6 months)

OPENINGS	TYPE APPLICATION	CLOSINGS						
		grant	conditional grant	denial	withdrawn	rejected/ dismissed	unspecified	TOTAL
1692	initial common prop.	1610	11	1	2	29	1	1654
370	initial common pass.	367	1	0	1	8	0	377
2047	initial contract prop.	1816	25	0	0	19	3	1863
6	initial contract pass.	8	0	0	0	2	0	10
955	initial broker	887	0	0	1	2	0	890
965	extension common prop.	971	11	1	0	8	2	993
105	extension common pass.	105	0	0	0	6	0	111
968	extention contract prop.	1026	4	0	1	14	0	1045
2	extension contract pass.	3	0	0	0	0	0	3
13	extension broker	11	0	0	0	1	0	12
25	modification	30	0	0	0	0	0	30
7148	TOTAL	6834	52	2	5	89	6	6988

SUMMARY--ON THE MERITS:	GRANTED	DENIED
New carriers	4725	1
Existing carriers	2131	1

General information - data contains figures for both property & passenger carriers & brokers

DISPOSITION PROFILE OF PERMANENT OPERATING RIGHTS APPLICATIONS
(common, contract, broker)

FISCAL YEAR	TYPE DISPOSITION	ALL APPLICATIONS	ON THE MERITS ONLY	NEW CARRIERS	ON THE MERITS
1985	full/partial grant	6856 (98.5%)	6856 (99.9%)	4725 (98.6%)	4725 (99.9%)
	denied	2 (.1%)	2 (.1%)	1 (.1%)	1 (.1%)
	dismissed/withdrawn	100 (1.4%)		68 (1.3%)	
	total	6958	6858	4794	4726
1984	full/partial grant	13745 (95.4%)	13745 (99.9%)	7555 (93.1%)	7555 (99.9%)
	denied	8 (.1%)	8 (.1%)	5 (.1%)	5 (.1%)
	dismissed/withdrawn	649 (4.5%)		555 (6.8%)	
	total	14402	13753	8115	7560
1983	full/partial grant	13276 (96.4%)	13276 (99.8%)	6010 (94.5%)	6010 (99.9%)
	denied	31 (.2%)	31 (.2%)	7 (.1%)	7 (.1%)
	dismissed/withdrawn	464 (3.4%)		346 (5.4%)	
	total	13771	13307	6363	6017
1982	full/partial grant	14786 (95.1%)	14786 (99.0%)	5728 (92.9%)	5728 (99.0%)
	denied	147 (.9%)	147 (1.0%)	58 (.9%)	58 (1.0%)
	dismissed/withdrawn	620 (4.0%)		380 (6.2%)	
	total	15553	14933	6166	5786

87

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DISPOSITION PROFILE OF PERMANENT OPERATING RIGHTS APPLICATIONS --- Continued

FISCAL YEAR	TYPE DISPOSITION	ALL APPLICATIONS	ON THE MERITS ONLY	NEW CARRIERS	ON THE MERITS
1981	full/partial grant	27475 (96.7%)	27475 (99.2%)	3702 (97.9%)	3702 (99.3%)
	denied	231 (.8%)	231 (.8%)	26 (.7%)	26 (.7%)
	dismissed/withdrawn	708 (2.5%)	-	54 (1.4%)	-
	total	28414	27706	3782	3728
1980	full/partial grant	22125 (97.4%)	22125 (99.6%)	1423 (97.4%)	1423 (99.4%)
	denied	97 (.4%)	97 (.4%)	8 (.5%)	8 (.6%)
	dismissed/withdrawn	513 (2.2%)	-	30 (2.1%)	-
	total	22735	22222	1461	1431
1979	full/partial grant	12233 (94.5%)	12233 (98.4%)	689 (92.1%)	689 (97.2%)
	denied	200 (1.6%)	200 (1.6%)	20 (2.7%)	20 (2.8%)
	dismissed/withdrawn	511 (3.9%)	-	39 (5.2%)	-
	total	12944	12433	748	709
1978	full/partial grant	8684 (88.9%)	8684 (95.8%)	528 (83.9%)	528 (92.3%)
	denied	384 (3.9%)	384 (4.2%)	44 (7.0%)	44 (7.7%)
	dismissed/withdrawn	699 (7.2%)	-	57 (9.1%)	-
	total	9767	9068	629	572
1977	full/partial grant	6038 (77.0%)	6038 (86.0%)	850 (73.2%)	850 (83.7%)
	denied	984 (12.5%)	984 (14.0%)	166 (14.3%)	166 (16.3%)
	dismissed/withdrawn	826 (10.5%)	-	145 (12.5%)	-
	total	7848	7022	1161	1016
TRANSITION QUARTER	full/partial grant	958 (73.2%)	958 (85.0%)	156 (69.7%)	156 (83.4%)
	denied	169 (12.9%)	169 (15.0%)	31 (13.8%)	31 (16.6%)
	dismissed/withdrawn	181 (13.9%)	-	37 (16.5%)	-
	total	1308	1127	224	187
1976	full/partial grant	4710 (69.8%)	4710 (79.7%)	468 (83.9%)	468 (93.6%)
	denied	1200 (17.8%)	1200 (20.3%)	33 (5.9%)	33 (6.4%)
	dismissed/withdrawn	836 (12.4%)	-	57 (10.2%)	-
	total	6746	5910	558	501

88

CHAINDEX STATISTICS AS OF 7/23/1985

A1. ACTIVE MOTOR CARRIERS.....	36650	C1. ACTIVE OTHERS.....	4016
A2. COMMON CARRIERS.....	26801	C2. PRIVATE LINES.....	166
A3. CONTRACT CARRIERS....	9847	C3. WATER CARRIERS.....	333
A4. M1 GEN FREIGHT.....	413	C4. RATE BUREAUS.....	70
A5. M1 HOUSEHOLD GOODS...	50	C5. PROPERTY BROKERS...	2923
A6. M1 OTHER THAN GF.....	743	C6. FREIGHT FWDRS.....	447
A7. M2 GEN FREIGHT.....	585	C7. HOLDING CO.....	77
A8. M2 HOUSEHOL GOODS...	147	D1. SECONDARY MC AUTHS.....	1338
A9. M2 OTHER THAN GF.....	1249	E1. MISCELLANEOUS STATUSES..	28817
A10. M3 (ALL).....	29815	E2. TEMP AUTH (TA).....	478
A11. M1 PASSENGER (BUS)...	94	E3. EMERG TEMP (ETA)...	855
A12. M2 PASSENGER (BUS)...	3440	E4. NEW AUTH (PEND)....	6148
A13. UNCLASSIFIED MC.....	35	E5. UNDELIVERABLE.....	255
B1. ALL RAILROADS.....	636	E6. QUESTIONABLE.....	26
B2. CLASS 1 LINE HAUL....	29	E7. INACTIVE AUTHS.....	21055
B3. CLASS 1 OTHER RR.....	75	E8. OTHER STATUSES.....	0
B4. CLASS 2 LINE HAUL....	25		
B5. CLASS 2 OTHER RR.....	17		
B6. CLASS 3 LINE HAUL....	340		
B7. CLASS 3 OTHER RR.....	150		

FOR ADDITIONAL INFORMATION:
CALL RALPH HORTON 275-6913

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7/17/85

PASSENGER FILINGS SINCE THE BUS LEGISLATION

1. 43 exit applications have been received --

Oklahoma Transportation Company - 4 Oklahoma; Kansas
Greyhound - Georgia; 2 West Virginia; California; Kansas; Oklahoma; Oregon; Nebraska; 2 Louisiana; Pennsylvania; Minnesota; 2 Tennessee; Washington; Texas; Kentucky; South Carolina; Missouri; New York
Virginia Stage Lines - 2 West Virginia
American Buslines - Nebraska
Trailways Tennessee Lines - 2 Tennessee
Trailways Lines, Inc. - 2 Oklahoma; 2 Kansas
Trailways Southern - Alabama
M. K. & O. Lines - Oklahoma
Trailways Southeastern Lines - Tennessee; 2 North Carolina
Trailway Bus System, Inc. - Utah; Colorado
Midwest Busline , Inc. - Missouri
Carolina Trailways - Maryland

2. 11 restriction removal applications have been received

3. 60 filings have been received for intrastate rate review

Carolina Coach Company - 2 North Carolina
Jefferson Lines - 2 Missouri
Peter Pan Bus Lines - 2 Massachusetts
Peoria-Rockford Bus - Illinois
Trailways, Inc, et al - Missouri; Louisiana; 2 Texas; Nebraska; Colorado
Bonanza Bus Lines - 2 Massachusetts; Rhode Island
Trailways Lines, Inc - Arkansas; Kansas; Oregon
Plymouth & Brockton Street Railway - 2 Massachusetts
Greyhound Lines - Missouri; 2 Massachusetts; Georgia; Oregon; California; 2 Louisiana; 2 Washington; Arkansas; 2 Tennessee; Kansas; New York; 2 Texas; West Virginia; 2 Alabama; 3 Nebraska; Pennsylvania; Ohio, North Carolina; Montana; Connecticut
K. G. Lines, Inc. - Kansas
Trailways of Tennessee - Tennessee
Kerrville Bus Co., et al. - 2 Texas
Trailways Southeastern, et al. - Tennessee; North Carolina; Georgia
Trailways Southern, et al. - Louisiana; Alabama
American Bus Lines - Nevada
Safeway Trails, et al - Pennsylvania

The passenger applications were not tracked before Nov. of 83.

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PASSENGER FILINGS SINCE THE BUS LEGISLATION (cont'd)

4. 3734 entry applications processed - 2398 New applicants
1336 Existing carriers

(of the 3734 - 3529 have been submitted for formal decisi
3360 unopposed/169 opposed)

42	contract applications	1.1%
19	communities not reg. served	.5%
43	Govt. assistance questio	1.2%
52	intra-state reg. route	1.4%
313	inter/intra reg. route	8.4%
110	interstate reg. route	2.9%
24	inter/intra reg/irrego route	.6%
3131	interstate irregular route	83.9%

most of which are special/charter operations allpoints in the U.S.

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